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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 122

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA ET AL., ETC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED MAY 29, 1931

(35,936)

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[fols. a & 1 & 2] Citation, in usual form, showing service on E. S. Ratliff et al., filed April 22, 1931, omitted in printing.

[fol. 3]

IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF OKLAHOMA

Equity No. 1156

CHAMPLIN REFINING CO., A CORPORATION, Complainant,

vs.

THE CORPORATION COMMISSION OF OKLAHOMA, FRED CAPSHAW, E. R. Hughes, and C. C. Childers, as Corporation Commissioners for the State of Oklahoma, and Fred Capshaw, E. R. Hughes, and C. C. Childers, Defendants

CERTIFICATE OF DISQUALIFICATION—Filed Sept. 24, 1930

Comes now Edgar S. Vaught, United States District Judge for the Western District of Oklahoma, and certifies his disqualification to participate in the hearing or hearings in the above entitled cause.

That some four or five years ago, he became the owner of a small amount of stock in a corporation, which has, within the last few months, purchased a valuable lease in the Oklahoma City field, which lease has a number of producing wells, and while technically this would not disqualify the said Judge, his participation might be misconstrued, and in order to avoid any basis for criticism or embarrassment, he certifies his disqualification.

The court has requested Honorable John H. Cotteral, United States Circuit Judge, Guthrie, Oklahoma, Hon. Franklin E. Kennamer, U. S. District Judge for the northern district and Hon. Robert L. Williams, U. S. District Judge for the eastern district of Oklahoma, to sit in this case, and they have indicated their acceptance and will compose the three judge court to hear all matters in connection with said case.

September 24th, 1930.

Edgar S. Vaught, District Judge.

[File endorsement omitted.]

[fol. 4] IN UNITED STATES DISTRICT COURT

DESIGNATION OF HON. ROBERT L. WILLIAMS—Filed Dec. 31, 1930

UNITED STATES OF AMERICA,
Tenth Circuit:

In my judgment the public interests require the designation and appointment of a Judge of this Circuit to hold and assist in holding the District Court of the United States for the Western District of Oklahoma, in place or in aid of the District Judge of that District;

I do, therefore, by these presents designate and appoint the Honorable Robert L. Williams, United States District Judge for the Eastern District of Oklahoma, to hold or assist in holding the District Court of the United States in and for the several divisions of the Western District of Oklahoma, at the times and places appointed by law for holding said court, from January 1, 1931, until December 31, 1931, inclusive, in place or in aid of the Honorable Edgar S. Vaught, United States District Judge for the said Western District of Oklahoma.

Robt. E. Lewis, Senior Circuit Judge.

[File endorsement omitted.]

[fol. 5] IN UNITED STATES DISTRICT COURT

DESIGNATION OF HON. FRANKLIN E. KENNAMER—Filed Dec. 31, 1930

UNITED STATES OF AMERICA,
Tenth Circuit:

In my judgment the public interests require the designation and appointment of a Judge of this Circuit to hold and assist in holding the District Court of the United States for the Western District of Oklahoma, in place or in aid of the District Judge of that District:

I do, therefore, by these presents designate and appoint the Honorable Franklin E. Kennamer, United States District Judge for the Northern District of Oklahoma, to hold

or assist in holding the District Court of the United States in and for the several divisions of the Western District of Oklahoma, at the times and places appointed by law for holding said court, from January 1, 1931, until December 31, 1931, inclusive, in place or in aid of the Honorable Edgar S. Vaught, United States District Judge for the said Western District of Oklahoma.

Witness my hand this 29th day of December, A. D. 1930.

Robt. E. Lewis, Senior Circuit Judge.

[File endorsement omitted.]

[fol. 6] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Equity. No. 1156

CHAMPLIN REFINING COMPANY, A CORPORATION, Plaintiff,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA and Fred Capshaw, E. R. Hughes, and C. C. Childers, Constituting the Corporation Commission of the State of Oklahoma, and Their Successors in Office, and Fred Capshaw, E. R. Hughes, and C. C. Childers, Defendants

SECOND AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT FILED BY LEAVE OF COURT—Dec. 2, 1930

Comes now the Champlin Refining Company, a corporation, as plaintiff, and by leave of court files this its second amended and supplemental bill of complaint as an amendment to its original bill and amended and supplemental bill and as a substitute therefor, and herein alleges the following:

I

That it is a corporation organized and existing under and by virtue of the laws of the State of New Mexico and is a citizen of said state; that the defendants, Fred Capshaw, E. R. Hughes and C. C. Childers, and their successors in the office of Corporation Commissioners of the State of

Oklahoma, are citizens of the State of Oklahoma with their residence and domicile in the Western Federal Judicial District of the State of Oklahoma.

II

That it has complied with the Constitution and laws of the State of Oklahoma regulating the admission of foreign corporations to do business in the State of Oklahoma and is now and had been for a long time prior to the commence-
[fol. 7] ment of this suit doing business in the State of Oklahoma, with its principal office and place of business in the City of Enid, Garfield County, State of Oklahoma.

III

That the matter herein in controversy is in excess of $3,000.00 exclusive of interest and costs and arises under the Constitution and Laws of the United States.

IV

That the Corporation Commission of the State of Oklahoma is a Board created and vested with certain powers by Article 9 of the Constitution of the State of Oklahoma; that the defendants Fred Capshaw, E. R. Hughes and C. C. Childers are the duly elected, qualified and acting Corporation Commissioners of the State of Oklahoma and have comprised the Corporation Commission of said state during all the time mentioned in this bill.

V

That it is now and has been since its incorporation engaged in the business of producing and refining crude oil and transporting and marketing petroleum, natural gas and their products in interstate and intrastate commerce; that it owns and operates an oil refinery at Enid, Oklahoma, with a capacity of refining 15,000 barrels of crude oil per day; that said refinery plant refines and manufactures gasoline, kerosene, lubricating oils, waxes, greases and other by-products; that it owns approximately 735 tank cars which it uses in the distribution of its refined products among its customers in Oklahoma, Texas, Colorado, Kansas, Arkansas, Missouri, Minnesota, Iowa, Nebraska, South Dakota, North Dakota, Wisconsin, Michigan, Illinois, New

Mexico and California, and controls and operates approximately 470 miles of pipe line for the transportation of oil and gas in Oklahoma and other states and owns and operates approximately 263 retail gasoline filling stations and 256 wholesale gasoline stations in the States of Oklahoma, [fol. 8] Kansas, Texas, Iowa, Colorado, and Illinois, which it supplies from its Enid Refinery, all of which represent an investment of several million dollars.

VI

That it is the owner and holder of oil and gas leases now and at all times mentioned in this bill in full force and effect on

Lots 30 to 35 inclusive, and 50 and 51, in Block 2, Roosevelt Place Addition to Oklahoma City, Oklahoma, and Lots 23 to 26 inclusive, in Block 9, Armourdale Addition to Oklahoma City, Oklahoma, all in Oklahoma County, Oklahoma,

and in what is generally known as the "Oklahoma City Oil Field"; that it is also and has been at all times herein mentioned the owner of oil and gas mining leases on the

East Half of the South-east Quarter of the North-east Quarter of Section 14, Township 7 North, Range 6 East, and an undivided one-half interest in the South Half of the South-west Quarter of Section 9, Township 6, Range 6, all lying in Seminole County, State of Oklahoma,

and in what is generally known as the "Greater Seminole Oil Field."

And also is the owner of an oil and gas lease covering

The South-east Quarter of the South-east Quarter and the South Half of the North-east Quarter of the South-east Quarter of Section 25, Township 23, North of Range 4 West, Garfield County, Oklahoma,

on which there is a producing well which is surrounded by approximately 600 acres of oil and gas leases owned by this plaintiff, and near which well there are no other producing wells, nor are there any correlative lease-hold owners of the oil and gas rights in said pool from which said producing well obtains its production, and that there are no neigh-

boring oil and gas lessees whose lands are being drained by said well.

VII

That at an approximate cost of $270,000.00 it drilled [fol. 9] two producing wells on the above described lots in the Oklahoma City Oil Field, one of which, when it was completed in the month of August, 1930, showed a potential capacity of 9000 barrels of crude oil per day, and the other when brought in showed a potential production of 5000 barrels of crude oil per day.

VIII

That the words "potential capacity" or "potential production" as herein used and as used in the findings and orders of the Oklahoma Corporation Commission, hereinafter referred to, mean the production of oil from a well or given wells without restriction and/or without pinching them or restraining the natural flow or the maximum flow by pumping.

IX

That before any of the orders of the Corporation Commission herein complained of were made and promulgated it has drilled and equipped nine wells on the said leases in the Greater Seminole Field with a potential capacity of 450 barrels of crude oil per day at the time this suit was filed on September 15th, 1930, at an approximate cost of $569,000.00.

X

That it owns and operates other oil and gas leases on lands in other oil and gas fields in Oklahoma in addition to those above described, which are also affected by the orders of the Oklahoma Corporation Commission herein complained of, with a potential capacity of approximately 1200 barrels of crude oil per day.

XI

That the Oklahoma Legislature passed an Act approved February 11th, 1915, entitled "An Act defining and prohibiting the waste of crude oil or petroleum, providing for [fol. 10] the equitable taking of the same from the ground

and conferring authority on the Corporation Commission, prescribing the penalty for the violation of this Act, and declaring an emergency," whereby it was enacted, in the first section thereof, "That the production of crude oil or petroleum in the State of Oklahoma, in such manner and under such conditions as to constitute waste, is hereby prohibited"; that the second section of said Act prohibited "the taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum" and declared that the "actual value of such crude oil or petroleum at any time shall be the average value as near as may be ascertained in the United States at retail of the by-products of such crude oil or petroleum when refined less the cost and a reasonable profit in the business of transporting, refining and marketing the same" and vested the Corporation Commission "with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum by the standard herein provided" and declared that "when so determined said Commission shall promulgate its findings by its orders duly made and recorded, and publish the same in some newspaper of general circulation in the State"; that the 3rd, 4th and 5th sections of said Act are as follows:

"Sec. 3. That the term 'waste' as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands. The Corporation Commission shall have authority to make rules and regulations for the prevention of such wastes, and for the protection of all fresh water strata, and oil and gas bearing strata, encountered in any well drilled for oil.

[fol. 11] "Sec. 4. That whenever the full production from any common source of supply of crude oil or petroleum in this State, can only be obtained under conditions constituting waste, as herein defined, then any person, firm or corporation, having the right to drill into and produce oil

from any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply. The Corporation Commission is authorized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply, within the State of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply of such crude oil or petroleum, by any person, firm, or corporation, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

"Sec. 5. That for the purpose of determining such production, a gauge of each well shall be taken under rules and regulations to be prescribed by the Corporation Commission, and said Commission is authorized and directed to make and promulgate, by proper order, such other rules and regulations, and to employ or appoint such agents with the consent of the Governor, as may be necessary to enforce this act."

that the 6th section provides for a hearing before the Corporation Commission, and the 7th section confers upon the Supreme Court of the State "appellate jurisdiction" to "review the action of said Commission in making any order, or orders, under this Act," and authorizes an appeal "by any person, firm or corporation, shown by the record to be interested therein" and directs that "orders so appealed from shall not be superseded by the mere fact of such appeal being taken, but shall be and remain in full [fol. 12] force and effect until legally suspended or set aside by the Supreme Court."

Sections 8 and 9 are as follows:

"Sec. 8. That in addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm or corporation, or any officer, agent or employee thereof, directly or indirectly violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars ($5,000.00), or by an imprisonment

in the county jail not to exceed thirty (30) days, or by both fine and imprisonment.

"Sec. 9. That in addition to any penalty imposed under the preceding section, any person, firm or corporation, violating the provisions of this act, shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent jurisdiction, at the suit of the State through the Attorney General or any county attorney, but such receivership shall only extend to the operating of producing wells and the marketing of the production thereof, under the provisions of this act."

Section 10 provides "That the invalidity of any section, subdivision, clause or sentence of this act shall not in any manner effect the validity of the remaining portion thereof."

XII

That the above Act approved February 11th, 1915, is embodied in Sections 7954 to 7963, inclusive, Oklahoma C. L. 1921, and will hereinafter be referred to as the "Oil Conservation Act" or "Conservation Act."

XIII

That the Oklahoma Legislature at its 1907-8 session [fol. 13] (see Section 3498, O. C. L. 1921) passed an act empowering the Corporation Commission to impose a fine upon "any corporation, person or firm" violating "any of its rules or requirements" and made "each day's continuance of such violation, after due service upon such corporation, person or firm, of the order or requirement of the commission" a separate offense, with the provision "that should the operation of such order or requirement be suspended, pending an appeal therefrom, the period of such suspension shall not be computed."

XIV

That assuming that said "Oil Conservation Act" is valid and constitutional legislation and that it vested them with authority to do so, the defendants Fred Capshaw, E. R. Hughes and C. C. Childers, as Corporation Commissioners of the State of Oklahoma, and acting as such Commission,

made and entered on June 30th, 1930, an order, No. 5189, in Corporation Commission cause No. 10146, the effect of which, if valid, was to restrict and curtail the production of crude oil in the Oklahoma City Oil Field, Greater Seminole Oil Field, and several other oil fields in the State of Oklahoma in which plaintiff owned and operated and now owns and operates the oil and gas wells heretofore referred to and other oil and gas wells, a copy of which order is hereto attached and made a part hereof as Exhibit "A"; and that in paragraph "F" of the findings of fact in said order the Commission found as a fact, without any evidence before it, that "the potential production of crude oil from existing wells in Oklahoma on and following the first day of July, 1930, will be approximately 1,362,000 barrels per day, and that the daily demand from Oklahoma is and will be approximately 650,000 barrels per day during the months of July, August and September 1930," and "that, therefore, there is an excess of potential production over consumption of 712,000 barrels per day which cannot be produced without waste as defined by the Statutes of Okla- [fol. 14] homa," and that "if no restraint were placed upon producing wells * * * or upon wells hereafter drilled during the months of July, August and September, the potential production of the State of Oklahoma would be much greater than 1,362,000 barrels per day and would exceed all transportation and marketing facilities and reasonable market demands to such an extent as to force large quantities of oil into earthen storage in this state and otherwise cause waste of a character prohibited by the laws of the State of Oklahoma," and that "In order to prevent such waste, the Commission finds that it is necessary to curtail the production from the pools" described in the petition "during the said months of July, August and September, 1930," according to a schedule therein set forth by which the Oklahoma City Field was restricted to a production of 130,037 barrels per day out of a 600,000 barrel per day potential; that by the decretal part of the said order the oil production was limited to an average of 650,000 barrels per day during July, August and September, and the Oklahoma City Field was not allowed to produce a maximum of more than 25 per cent of its potential production; that the Greater Seminole Field was limited to two-thirds of its

potential production during said months, the East Earlsboro and South Earlsboro pools were limited to one-third of their potential production, and three other designated pools limited to one-fourth of their potential production during said months, and the Commission by its said order expressly retained jurisdiction to make supplementary and ancillary orders from time to time as required by new developments "and as instructions to the Umpire and Operators' Committee and authorized the umpire and Operators' Committee" to report the facts to support any supplemental or ancillary order.

XV

That assuming that said "Oil Conservation Act" is [fol. 15] valid and constitutional legislation and that it vested them with authority to do so, the defendants, Fred Capshaw, E. R. Hughes and C. C. Childers, as Corporation Commissioners of the State of Oklahoma, and acting as such Commission, made and entered on August 30th, 1930, an order, No. 5292, in Corporation Commission cause No. 10146, the effect of which, if valid, was to further restrict and curtail the production of crude oil in the Oklahoma City Field, the Greater Seminole Oil Field, and other oil fields in Oklahoma in which the plaintiff then owned and now owns and operates oil producing wells, a copy of which order is hereto attached and made a part hereof as Exhibit "B"; that in said order the Commission found as a fact that the potential production of crude oil in Oklahoma had then increased to 1,481,118 barrels per day and that the reasonable market demand had decreased from 650,000 barrels to 550,000 barrels per day since June 30th, and that it was necessary to further curtail the output of crude petroleum in Oklahoma; found that the potential production in the Oklahoma City field was 700,000 barrels per day and curtailed the production of crude oil in that field from 130,037 barrels per day to 88,903 barrels per day, and in said order prohibited the production of oil in the Greater Seminole Field in excess of 50 per cent of the potential production, cut the production in some fields to one-fourth of the potential and the Oklahoma City field to 18¾ths per cent of its potential during the month of September, but did not undertake to curtail the production in smaller fields

having a production of 260,000 barrels per day, and in said order retained jurisdiction to make supplemental and ancillary orders from time to time as required by new developments and as recommended by the Umpire and Operators' Committee upon their report of facts showing the necessity thereof, and thereby modified its former order shown by Exhibit "A" hereto attached.

[fol. 16] XVI.

That the defendants, acting as the Corporation Commission of Oklahoma, made, entered and promulgated said orders shown by Exhibits "A" and "B" hereto attached without having heard the testimony of any witness under oath and without having heard and considered any sort of legal evidence upon which to base either of said orders; that without any legal evidence of any sort before it said defendants, acting as the Corporation Commission of Oklahoma, did on September 30th, 1930, make and enter Order No. 5337 in said Corporation Commission Cause No. 10146, extending orders Nos. 5189 and 5292 in full force and effect until and including October 10th, 1930, as shown by Exhibit "C" attached hereto.

XVII

That assuming that said "Oil Conservation Act" is valid and constitutional legislation and that it vested them with authority to do so, the defendants Fred Capshaw, E. R. Hughes and C. C. Childers, as Corporation Commissioners of the State of Oklahoma, and acting as such Commission, made and entered on October 28th, 1930, an order, No. 5369, in Corporation Commission cause No. 10146, the effect of which, if valid, was to further restrict and curtail the production of crude oil in wells producing over 5 barrels per day in all fields in the State of Oklahoma, including the Oklahoma City and Greater Seminole Fields, a copy of which order is hereto attached and made a part hereof as Exhibit "D"; that in said order defendants found "that the potential daily production of crude oil from the wells in Oklahoma during the month of October, 1930, is and will be approximately 3,638,478 barrels and that during the months of November and December, 1930, the said potential daily production will be 4,142,872 barrels

and 4,244,294 barrels respectively, and that the daily demand for crude oil from Oklahoma is and will be approximately 550,000 barrels in October, 545,000 barrels in [fol. 17] November, and 535,000 barrels in December 1930"; that said order contained a "pro-ration schedule" for the period between October 1st and December 21st, 1930, in which it is found and ordered that the Oklahoma City Field for October had a potential production of 2,200,000 barrels, of which amount it was restricted to a daily production of 131,095 barrels, for November a potential production of 3,319,000 barrels with production restricted to 134,589 barrels per day, and for December a potential daily production of 3,446,000 barrels with an allowed production per day of 131,003 barrels; that jurisdiction over the cause was expressly retained by the Commission.

XVIII

That in its order of June 30th, 1930, shown by Exhibit "A" hereto, Ray M. Collins was appointed by the Oklahoma Corporation Commission as its umpire and agent "to enforce the rules and regulations" therein made, and was authorized to employ assistants to aid him in administering the rules and regulations; that said Ray M. Collins is now and has been for many months prior hereto the umpire for the defendants, purporting to act as the agent and representative of the Corporation Commission of Oklahoma, whereas in fact said Collins is not now and never has been a legal agent of the Corporation Commission and is not now and never has been an officer of the State of Oklahoma with any authority to act in respect to the matters covered by the said Act of the Legislature approved February 11th, 1915, or the rules and regulations made thereunder by the Corporation Commission; that in its said order No. 5369, shown by Exhibit "D" hereto attached, the defendants again appointed Ray M. Collins as "Umpire and Agent of the Commission to enforce the rules and regulations herein made and he is hereby authorized to employ as many assistants as he shall deem necessary"; that as a fact said Ray M. Collins is now and has been at all times while acting under purported authority from the [fol. 18] Corporation Commission of Oklahoma the paid employee and representative of numerous persons, firms

and corporations producing oil in the various Oklahoma fields and engaged in the manufacture of refined products and marketing the same in competition with complainant; that said Ray M. Collins, for his services in acting as the appointed agent and umpire of the Corporation Commission, is now and has been receiving a monthly salary at the rate of $24,000.00 per year from various firms, persons and corporations engaged in the production of crude oil in Oklahoma and the refining of crude oil in competition with complainant; that said Collins has neither been paid nor promised by the State of Oklahoma or any political subdivision thereof any compensation for his services as alleged umpire and agent of the said Commission; that said Collins has at all times acted in conjunction with and in the service of a so-called Operators' Committee composed of various individuals producing oil in Oklahoma and representatives of firms and corporations producing crude oil in Oklahoma fields and manufacturing the refined products therefrom and marketing the same.

XIX

That the Commission's order No. 5189, made on June 30th, 1930, provides that:

"The gauge to determine potential shall be taken by each operator in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken between the hours of seven A. M. on the day set by the umpire and seven A. M. on the following day. Prior to the taking of such gauge and in respect of each producing lease covered hereby, the umpire shall appoint a representative of an operator owning a lease adjoining the particular property to be gauged, and shall notify the operator whose property is to be guaged of the name of the rep- [fol. 19] resentative, such notification to be given prior to the taking of such gauge. It shall be the positive duty of such representative to remain on the lease that is being gauged throughout the entire day that the gauge is being taken to witness the gauging of the production therefrom; and immediately upon the completion of such gauge, such witness and the operator whose property was gauged shall file a written statement with the umpire showing the production of said lease, and of each well thereon for the day

said gauge is taken. The production so shown shall constitute the potential for said lease until the next gauge is taken."

That in its said order No. 5369, made on October 28th, 1930, it is provided that:

"The gauge to determine potential shall be taken by each operator in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken between the hours of seven A. M. on the day set by the order of the Commission, and seven A. M. on the following day. Prior to the taking of such gauge and in respect of each producing lease covered hereby the umpire shall appoint a representative of an operator owning a lease adjoining the particular property to be gauged, and shall notify the operator whose property is to be gauged of the name of the representative, such notification to be given prior to the taking of such gauge. It shall be the positive duty of such representative to remain on the lease that is being gauged throughout the entire day that the gauge is being taken to witness the gauging of the production therefrom; and immediately upon the completion of such gauge, such witness and the operator whose property was gauged shall file a written statement with the umpire showing the production of said lease, and of each well thereon for the day said gauge is taken. The production [fol. 20] so shown shall constitute the potential for said lease until the next gauge is taken."

XX

That the oil wells in the Oklahoma City Field have never been gauged by the Oklahoma Corporation Commission or by any competent and legally qualified agent of said Commission or legal and qualified officer of the State of Oklahoma; that the Commission's findings of the potential production in the Oklahoma City field, set forth in the various orders hereto attached as exhibits, were not based upon any gauge of the wells in said field; that the Commission's findings of the potential production in the Seminole Field and other fields, set forth in said orders, were not based upon any gauge of the wells in said respective fields; that no legal and lawful gauge as provided by the Oklahoma

statutes has ever been made by said corporation Commission or under any valid rules prescribed by said Commission; that the Governor of the State of Oklahoma has never consented to the employment or appointment of agents to make the gauge, as required by Section 7958, O. C. L. 1921.

XXI

That various persons, firms and corporations owning and operating oil wells in the Oklahoma City Field, Greater Seminole Field, and some of the other fields, organized what is known and referred to in the Commission's rules, regulations and orders herein complained of as an "Operators' Committee"; that said Operators' Committee is composed of plaintiff's competitors; that said Operators' Committee procured the Corporation Commission to name one of their employees, Otto B. Bradford, as a so-called umpire for the Oklahoma City Oil Field; that acting under the directions of the Operators' Committee, approved by the Corporation Commission, it was the business of Otto B. Bradford, as alleged umpire, to see that the producers of oil in the Oklahoma City Field kept their wells closed down under what is known as a time proration basis and produc- [fol. 21] tion allowed upon an unfounded and unwarranted estimation of the potential production of the Oklahoma City Field, and no gauge was ever made on wells in the Oklahoma City Field, as required by the statute; that said Otto B. Bradford is not and never has been an agent or representative of the State of Oklahoma or a political subdivision thereof; that he has neither received nor been promised by the State of Oklahoma or any authorized agent of the State of Oklahoma or political subdivision thereof, any compensation for his services as alleged umpire; that said Bradford has been receiving from the Operators' Committee compensation for his services and all his acts and deeds have been illegal and unauthorized by any valid rule and regulation of the Commission or by the provisions of any statute of the state.

XXII

That neither the Conservation Act nor the rules, regulations and orders of the Corporation Commission requires nor provides or provided for notice of time and place to

plaintiff or to any other operators in the Oklahoma field of a pretended gauge or any effort to gauge the wells of the other operators; that no provision is made in said Conservation Act nor in the rules and regulations of the Commission for notice to the owners of oil wells in the Seminole Field that at a certain time and place a gauge will be made of the production of oil in wells in the Oklahoma City Field and no provision is made by said Conservation Act or the Commission's rules and regulations for notice to the plaintiff of the time and place of any gauge of the oil produced from wells in the Oklahoma City Field other than wells on its own leases or wells on leases or lands adjoining its leases in the Oklahoma City Field; that it never received any notice of the time and place of gauging the production of oil from wells of other operators in the Oklahoma City Field, or in the Seminole Field, or the East or South Earls-[fol. 22] boro Fields, or in other fields described in the Commission's rules and regulations, subjecting them to its proration orders; that although the Commission's orders, rules and regulations herein complained of condition plaintiff's right to produce the full capacity of its wells upon the potential production of the wells of other owners in the Oklahoma City Field, Greater Seminole Field, and other prorated fields, neither the Conservation Act nor the rules and regulations of the Commission provide for any notice to plaintiff or to any other operator of the time and place of making gauges to determine the potential production, and no notice having been provided for by said Conservation Act or the Commission's rules and regulations, and no notice of any intended gauge having been served upon it, the rules, regulations and orders of the Commission herein complained of are each and all void in that they deny plaintiff due process of law guaranteed to it by the Fourteenth Amendment to the Constitution of the United States; that the Commission's rules and regulations providing for a gauge of the wells undertakes to vest final and conclusive authority in the various and sundry owners of oil wells in said Oklahoma fields to determine, in the presence and with the consent of an adjoining operator, the amount of the potential production of the well gauged, and in undertaking

to vest private owners with that authority the rules constitute an unconstitutional interference with the plaintiff's use of its property, deny plaintiff due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States, and likewise deny it equal protection of the law guaranteed by said amendment.

XXIII

That it now has and has had at all times and will continue to have facilities for the transportation of its crude oil from its said leases in the Oklahoma City field, Greater Seminole Field, and other field to its Enid refinery and a [fol. 23] market for its refined products; that neither it nor any other operator in the Oklahoma City Field has produced and stored crude oil in earthen tankage or permitted it to run at large on the surface of the earth; that it is not now and has not at any time wasted any of the oil produced by it from its leases in said fields and that all the oil it can produce will be utilized for commercial purposes; that its oil wells are now and have been since completion equipped in the most modern and efficient manner for the production of oil; that the closing in or pinching in of plaintiff's wells in said Oklahoma City Field will cause water to enter the oil and gas sand, greatly damage said wells and result in material waste of oil and gas to its irreparable damage.

XXIV

That said Commission's rules, regulations and orders herein complained of are arbitrary and discriminatory in that they allow oil producers in certain sections of the state to produce their wells to 100 per cent of their capacity, whereas the producers in other areas are restricted to much lower percentages and the producers in the Oklahoma City Field are restricted below 2.78 per cent of the capacity of their wells; that it has been required and compelled by defendants to shut entirely in its wells in the Oklahoma City Field and limit its production from its Greater Seminole Field wells to a minimum, thus compelling it to purchase oil from other producers in order to run its refinery although it has sufficient production of its own to keep its refinery running at full capacity; that it can produce oil from its

wells in the Oklahoma City and Greater Seminole fields and other fields for a less cost than the price it is now and will be compelled to pay for crude oil from other producers on the open market; that said rules, regulations and orders thereby deny it due process of law and equal protection of the laws guaranteed by the Fourteenth Amendment to [fol. 24] the Constitution of the United States; that under present conditions and conditions existing for several months prior hereto it has been compelled to run its refinery at a loss, whereas if it is allowed to produce and refine its own production in said Oklahoma fields it can run its refinery at a profit or at least without a loss; that its refinery is equipped with the most modern and efficient stills, machinery and apparatus for the refining of crude oil into gasoline and other by-products.

That the rules, regulations and orders of said Commission, as hereinbefore set forth, are unconstitutional and void in that said orders as entered have the effect of confiscating the property of this plaintiff and for the further reason that they are in contravention of the provisions of Section 2 of Article 2 of the Constitution of Oklahoma, which is as follows:

"All persons have the inherent right to life, liberty, and pursuit of happiness and enjoyment of the gains of their own industry,"

in that this plaintiff has rendered its property highly valuable by its own industry, and it is capable of taking therefrom without waste, oil in large quantities as herein otherwise set out of which it is now deprived by said orders.

XXV

That said rules, regulations and orders of the Commission prohibiting pipelines from running and purchasers from buying more oil from any producer than allowed by the rules, regulations and orders are void for the want of any authority to prescribe them and are intended to and actually have the effect of coercing purchasers and pipe lines into submission thereto and thereby depriving plaintiff of the means of transporting its oil.

XXVI

That many large oil corporations, firms and individuals selfishly interested in maintaining high prices for crude oil [fol. 25] formed by agreement among themselves what is known in the rules and regulations of the Commission as an "Operators' Committee" and through Ray M. Collins said operators, competitors of the plaintiff, formulated their so-called proration orders herein complained of and submitted them to the Corporation Commission for approval; that the Commission approved and adopted said suggested rules, regulations and proration orders without sufficient appropriate or competent evidence, legally or properly to justify the entry of said orders; that said major oil companies, competitors of plaintiff, entered into an agreement, combination and confederation among themselves to limit the natural output of wells in the Oklahoma City Field, Greater Seminole Field, and other fields in Oklahoma and the United States, and thereby restrict production for the purpose of controlling the price of crude oil and its refined products and eliminating thereby plaintiff and others in its class as competitors, and said agreements were and are in restraint of trade and commerce among the several states and in violation of the anti-trust laws of the United States and the State of Oklahoma, and proration orders of the Corporation Commission are a violation of Section Eight of Article One of the Constitution of the United States.

XXVII

That C. C. Julian Oil and Royalties Company, a corporation, did on August 28th, 1930, file a petition in the Supreme Court of the State of Oklahoma wherein it alleged that it was the owner of oil and gas leases in the Oklahoma oil fields and had at that time and for some time prior thereto producing oil wells on its leases in said field and on other and additional allegations prayed the court to issue a writ of prohibition directed to the defendants and the Corporation Commission of the State of Oklahoma restraining it from enforcing its rules, regulations and proration orders set forth in Exhibit "A" to this bill; that the [fol. 26] Supreme Court issued a temporary writ of prohi-

bition but on motion of the Attorney General of the State vacated the temporary writ, retaining however jurisdiction of the petition for the writ for decision on its merits; that thereafter and on October 14th, 1930, the court decided the cause and entered a judgment dismissing the petition for the writ of prohibition, holding thereby that the Conservation Act of the Legislature conferred jurisdiction and authority upon the Corporation Commission to do the things complained of by the petitioner in that case; that counsel for this plaintiff appeared before the Supreme Court in the C. C. Julian Oil and Royalties Company case for writ of prohibition and filed a brief as amicus curiæ; that the Supreme Court filed a written opinion upholding the jurisdiction of the Corporation Commission to make the proration order of June 30th, 1930, and to that opinion reference is here made.

XXVIII

Plaintiff further alleges that the oil Conservation Act and the separate sections thereof are unconstitutional and void for the following reasons and under the provisions of the Fourteenth Amendment to the Constitution of the United States, in that:

(a) Said Act deprives plaintiff of the use of its property.

(b) Said Act deprives the plaintiff of the equal protection of the laws.

(c) Said Act denies the plaintiff due process of law.

(d) Said Act undertakes to control and fix prices at which plaintiff must sell or purchase crude oil.

(e) The provisions of said Act are too vague and uncertain intelligently to forewarn the plaintiff and others in its class of the rule or law it must abide by in the conduct of its business.

[fol. 27] (f) That said Act is void for uncertainty and vagueness in that it does not define what is meant by (1) "Economic waste"; (2) "waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demand"; (3) "inequitable or unfair taking from a common source of

supply"; (4) "unreasonable discrimination in favor of any one such common source of supply as against another."

(g) Said Act is an arbitrary and unreasonable limitation on the right of plaintiff and others in its class to produce oil from its own private property and market the same at whatever price it chooses to accept therefor.

(h) Said Act undertakes to limit and confine plaintiff to a taking of crude oil from the ground except in such manner and on such terms as the Corporation Commission of the State of Oklahoma deems in advance of the taking is equitable and fair.

(i) Said Act limits the plaintiff in the taking of crude oil from its wells to an amount based on the ratio and proportion of the potential production of its wells to the potential production of all the wells in the so-called common source without in any way first defining the limitations and boundaries of the common source.

(j) Said Act does not define the manner in which the extent of such common source of supply shall be ascertained or designated.

XXIX

That said Conservation Act is void in that it violates Section 1 of Article 4 of the Oklahoma Constitution in that it attempts to delegate to the Corporation Commission power and authority to prescribe by legislative rule the future conduct of operators of oil and gas wells in Oklahoma by preventing each from taking from a common underground reservoir of crude oil an inequitable and unfair proportion thereof; that it further violates Section [fol. 28] 1 of Article 4 of the Constitution in that it confers and delegates legislative, executive and judicial authority upon the Corporation Commission.

XXX

That it is void in that it violates Section 1 of Article 5 of the Oklahoma Constitution which confines all the legislative authority of the State of Oklahoma to the Legislature consisting of a Senate and House of Representatives, reserving to the people only "the power to propose laws

and amendments to the Constitution and to enact or reject the same at the polls independent of the Legislature" and also reserving "power at their own option to approve or reject at the polls any Act of the Legislature."

XXXI

That the Commission's rules, regulations and orders herein complained of being based upon the findings of fact therein recited, are void in that they were made and are maintained with threats of their enforcement in excess of the Commission's authority and powers either granted by the Constitution of Oklahoma or any statute of the state; that said rules, regulations and orders of the Commission are void in that they undertake to regulate, control and unreasonably hamper plaintiff's business of refining oil and marketing the refined products therefrom in violation of Plaintiff's rights guaranteed by the Fourteenth Amendment to the Constitution of the United States.

XXXII

That the defendants Capshaw, Hughes and Childers, as Corporation Commissioners of the State of Oklahoma and acting as said Commission, are threatening to continue to make and enforce from time to time for an indefinite period its present rules, regulations and orders, thereby depriving plaintiff of its rights guaranteed by the Fourteenth Amend- [fol. 29] ment to the Constitution of the United States; that the aforesaid defendants acting as the Corporation Commission of the State of Oklahoma, intend to and will make said rules, regulations and orders for a brief period of time and then shortly before the expiration thereof continue them, all for the purpose of preventing this plaintiff from presenting to this court and to the Supreme Court of the United States the issue of the validity of said rules, regulations and orders and their constitutionality and the constitutionality of the Oklahoma Oil Conservation Act; that this course of conduct has been maintained by the aforesaid defendants from month to month from June 1930 and will hereafter be continued from month to month or for brief periods for the purpose of coercing this plaintiff and others similarly situated into an acceptance and acquiescence in their orders, rules and regulations and with

the hope that this suit or any other action commenced in the Federal Court will become moot before a trial and decision can be had; that plaintiff has produced oil from its Oklahoma City Oil field wells in violation of said orders, rules and regulations and that the aforesaid defendants, acting as the Corporation Commission, have cited plaintiff to appear before them as such Corporation Commission to show cause why it should not be punished for contempt and visited with the penalties prescribed by the statutes; that the penalties prescribed by the Oklahoma Statutes herein pointed out for violation of the orders of the Corporation Commission are excessive and unreasonable and imposed by the statutes for the purpose of deterring anyone injured or affected by the orders of the Corporation Commission from contesting their validity or correctness in any judicial forum; that the penalties prescribed by the Oklahoma Statutes for a violation of the Corporation Commission's orders beset judicial review with such deterrents as to deny plaintiff due process of law; that the penalties prescribed by the Oklahoma Statutes are so far confiscatory as to operate, as they were intended by the Legisla- [fol. 30] ture, to coerce plaintiff and any other person, firm or corporation, into acquiescing therein and thereby forego and surrender the right to have their orders reviewed by the courts; that without regard to the validity of the orders, rules and regulations herein complained of plaintiff is entitled to an injunction from this court restraining the enforcement of the penalties prescribed by the said Oklahoma Statutes; that the aforesaid defendants, acting as Corporation Commissioners of the State of Oklahoma and as such Commission are threatening to punish this plaintiff and iipose upon it the penalties prescribed by statute, including a receivership for its properties; that unless restrained by writs and orders from this court the aforesaid defendants will continue to enforce the rules, regulations and orders herein complained of and continue to deprive plaintiff of its rights guaranteed by the Courteenth Amendment to the Constitution of the United States.

XXXIII

That since the filing of the original bill in this cause plaintiff did on November 7th, 1930, file with the Corpora-

tion Commission of the State of Oklahoma its written special appearance and motion to vacate its rules, regulations and orders herein complained of, in which motion it stated that this suit was commenced in this court "about September 15th, 1930, for the purpose of restraining and enjoining the enforcement of said rules, regulations and orders herein complained of" and further set forth substantially all the facts and allegations herein contained, and prayed "that the said proration order of October 28th, 1930, in cause No. 10326, and all other prior proration orders affecting this movant, be set aside and annulled at lease insofar as movant is concerned; if this relief will not be granted then movant prays that the Commission enter an order suspending the application of the penalty provisions of the statute during the pendency of its action in equity in the United States Court for the Western District of Okla- [fol. 31] homa wherein it seeks to restrain and enjoin this Commission from enforcing said proration orders"; that said motion to vacate was set for hearing before the Commission on November 20th, 1930. at the offices of the Commission in the Capitol Building at Oklahoma City, Oklahoma; that on said date plaintiff appeared with its counsel and witnesses and those operators opposed to the motion appeared through their representatives and counsel, whereupon evidence was introduced and heard and on the morning of November 21st, 1930, the Commission denied plaintiff's said motion to vacate and entered an order denying plaintiff's motion to vacate and its motion to stay or suspend the enforcement of the orders, rules and regulations herein complained of pending a trial and final decision of this case in this court.

XXXIV

That the Corporation Commission of the State of Oklahoma is the only tribunal provided by the laws of said state endowed with final legislative authority on the subjects herein complained of; that the Oklahoma Supreme Court on appeal from said rules, regulations and orders herein complained of, has no authority to review said orders, rules and regulations and substitute therefor its own orders, rules and regulations, said court being confined exclusively to the determination of any and all judicial questions arising in respect to the validity and enforcement of said rules,

regulations and orders; that plaintiff has no adequate remedy at law and is therefore entitled to relief in equity.

Prayer

Wherefore plaintiff prays (1) that this court enter a temporary restraining order restraining defendants from enforcing said Oil Conservation Act and likewise from enforcing its said orders, rules and regulations herein complained of and that a temporary injunction be granted by [fol. 32] a three-judge court as provided by Section 266 of the Federal Judicial Code; (2) that said Oil Conservation Act be declared unconstitutional and void; (3) that if the relief prayed for in the second paragraph of this prayer can not be granted, then that this court adjudge that the rules, regulations and orders of the Commission herein complained of unconstitutional and void; (4) that the defendants, and each of them, and their successors in office, their agents, servants, employees and successors, and all persons acting under or through them, be temporarily and then permanently enjoined from in any way or manner, by reason of the apparent force of said orders, enforcing said purported orders, rules and regulations, or any part thereof, against this plaintiff, and enjoined temporarily and permanently from making, promulgating and enforcing any similar rules, regulations and orders; (5) that the statutes of Oklahoma prescribing the penalties for the violation of the rules, regulations and orders of the Corporation Commission be adjudged unconstitutional in that they deprive the plaintiff of due process of law, and that the defendants be temporarily and permanently enjoined from imposing upon this plaintiff any of the statutory penalties for the violation of said orders, rules and regulations; (6) that plaintiff have all such other, further and general relief as it may be entitled to under the premises and the facts.

Horace G. McKeever, Harry O. Glasser, A. K. Swann, Nathan Scarritt, Edgar S. deMeules, Geo. S. Ramsey, Counsel for Plaintiff. Ramsey, deMeules, Martin & Logan, Tulsa, Okla.; McKeever, Elam & Stewart, Enid, Okla., of Counsel.

[fol. 33] *Duly sworn to by H. H. Champlin. Jurat omitted in printing.*

[fol. 34] EXHIBIT "A"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10146. Order No. 5189

In the Matter of the Application of WIRT FRANKLIN for Rules and Regulations to be Established by the Commission to Prevent the Waste of Petroleum in the Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando, and Township 20 North, Range 4 West, and All Pools in the Greater Seminole Area as Shown by the Map Attached to the Petition Herein, and All Other Producing Areas That May Come into Production During the Months of July, August, and September, 1930, All in the State of Oklahoma

Comes now Wirt Franklin, petitioner herein, by his counsel, and this matter being set for hearing on this day, and the Commission having heard and considered the evidence of the petitioner, and the evidence of any and all persons opposing said petition, and being advised in the premises, finds as follows:

(a) That the lands covered by this application which will be subject to the rules and regulations established by this Order are those described in "Exhibit B" attached to the petition filed herein, and, specifically, the following pools: Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando and Township 20, Range 4 West, and all pools in the Greater Seminole Area, and such new pools and sands as may be brought into production during July, August, and September, 1930.

(b) That notice by publication on all persons or classes interested in this proceeding and in the rules and regulations to be established hereby has been given, as required by law, in a newspaper of general circulation in this State, and that, in addition reasonable notice in writing has been served personally on all persons, firms and corporations

complained against in this proceeding and due proof of service of notice has been made and filed herein.

(c) The Corporation Commission finds from the evidence that there is an overproduction of crude oil in the State of Oklahoma attended by waste of gas and of gas pressure and that the producers of crude oil in the oil pools described in the Petition herein are threatening to and will, unless restrained by the rules and regulations of the Corporation Commission, commit physical waste of crude oil, economic waste, underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands, and that the commission of such waste is so imminent in each of the areas involved in this proceeding that the orders, rules and regulations prayed for in the Petition herein are necessary in order to prevent such waste.

[fol. 35] The Commission further finds that there is a general overproduction and importation of crude and refined petroleum in the United States, and that this fact tends to reduce the amount of crude oil that can be produced in the State of Oklahoma without waste; that the potential production of crude oil in the United States is at this time approximately 4,730,000 barrels per day, and imports of crude and refined petroleum aggregate about 300,000 barrels per day, thus creating a total possible current supply of 5,030,000 barrels per day as against an approximate daily demand for domestic use and export of 2,840,000 barrels per day. That by reason of this great oversupply and threatened waste, potential production is now being curtailed in Oklahoma and other producing regions, and unless there is a continuance of curtailment of production in the areas involved herein, the conservation measures now in effect in the other oil producing states may be abandoned, thus causing large quantities of petroleum to be produced in such other states in excess of their local demand and forced upon the market to the demoralization of the industry and a consequent reduction in demand for crude oil from Oklahoma, with a corresponding increase in waste in this State and an undue exhaustion of our oil resources. The Commission finds that this petroleum situation con-

stitutes a great state emergency and that the laws of the State of Oklahoma and the powers of the Corporation Commission should be availed of to remove the same.

(d) The Commission further finds from the evidence that, in addition to the excess of potential and actual production and imports over current demand, there are stocks of petroleum on hand in the United States aggregating more than 698,000,000 barrels, which stocks are excessive and beyond the needs of the petroleum industry. That by reason of the excessive supply thus indicated the purchasers of crude oil in Oklahoma are unwilling to purchase crude oil in Oklahoma for storage purposes in any amount that would be adequate to take care of the surplus of potential production over current demand and that, therefore, there is not sufficient empty tankage available to take care of said excess and unless potential production in Oklahoma is curtailed, much oil would necessarily go to earthen storage where it would evaporate and thus be wasted. The Commission further finds that the storage of oil in Oklahoma under existing conditions would involve waste for the further reason that there is already an excess of stored oil locally, and, there being an oversupply, oil now stored would have to remain in storage for a great length of time and would deteriorate.

(e) The Commission finds from the evidence that in order to curtail the production of crude oil in Oklahoma in a manner to prevent the commission of waste it will be necessary to enforce proportionality of taking from the wells and leases in the flush and semi-flush areas described in the Petition, and that unless such proportionality is required, injustice would be done as between producers in the same pool and as between different pools in that drainage would occur from one lease to another, an undue proportion of the gas pressure would be utilized by some operators to the detriment of others and unfair discrimination would arise as between pools.

(f) The Commission further finds that the potential production of crude oil from existing wells in Oklahoma on and following the first day of July, 1930, will be approximately 1,362,000 barrels per day, and that the daily demand

from Oklahoma is and will be approximately 650,000 barrels per day during the months of July, August, and September, 1930. That, therefore, there is an excess of potential production over consumption of 712,000 barrels per day which cannot be produced without waste as defined by the Statutes of Oklahoma.

[fol. 36] The Commission further finds that the above mentioned potential production is only that from the wells which would be permitted to produce under existing orders of this Commission and does not include wells which by said order are required to remain shut-in for the length of time therein prescribed; that if no restraint were placed upon producing wells or wells now completed or upon wells hereafter drilled during the months of July, August and September, the potential production of the State of Oklahoma would be much greater than 1,362,000 barrels per day and would exceed all transportation and marketing facilities and reasonable market demands to such an extent as to force large quantities of oil into earthen storage in this State and otherwise cause waste of a character prohibited by the laws of the State of Oklahoma. In order to prevent such waste, the Commission finds that it is necessary to curtail the production from the pools in the Petition described and each of them during the said months of July, August and September, 1930, and according to the subjoined schedule showing the pools to be prorated, the potential production, daily production of each, the percentage of potential production allowable in each pool and the resulting production under proration for the said three (3) months period, and the shut-in time in each pool:

Potential and Allowed Production, State of Oklahoma, July, August, September, 1930

	July		August		September	
	Est. potent.	Est. prod.	Est. potent.	Est. prod.	Est. potent.	Est. prod.
Production allowed, 66 2/3%:						
Allen (Wilcox)	7,000	4,667	6,650	4,433	6,300	4,200
Allen (Cromwell)	18,433	12,289	17,880	11,920	17,880	11,920
Bowlegs	30,056	20,037	29,154	19,436	29,154	19,436
Carr City	11,252	7,501	10,814	7,209	10,490	6,993
Earlsboro (old)	29,585	19,723	28,698	19,132	27,838	18,559
Earlsboro (Towns)	9,000	6,000	8,100	5,400	7,290	4,860
Little River	48,907	32,605	47,440	31,627	46,017	30,678
E. Little River	20,000	13,333	19,000	12,667	18,000	12,000
Marshall-Lovell	6,000	4,000	5,820	3,880	5,645	3,763
Maud	6,262	4,175	6,074	4,049	5,892	3,928
Mission	15,714	10,476	15,243	10,162	14,786	9,857
Sasakwa	10,800	7,200	9,720	6,480	8,750	5,833
Searight	14,235	9,490	13,808	9,205	13,394	8,929
Seminole	30,296	20,197	29,387	19,591	29,387	19,591
East Seminole	4,405	2,937	4,273	2,849	4,145	2,763
St. Louis	40,000	26,667	38,800	25,867	37,636	25,091
Subtotal	301,945	201,297	290,861	193,907	282,604	188,401
Production allowed, 33 1/3%:						
East Earlsboro	60,000	20,000*	50,000	20,000*	40,000	20,000*
So. Earlsboro	35,000	11,666	28,000	9,333	20,000	6,666
Subtotal	95,000	31,666	78,000	29,333	60,000	26,666

* Min.

[fol. 37] Potential and Allowed Production, State of Oklahoma, July August and September, 1930—Continued

	July		August		September	
	Est. potent.	Est. prod.	Est. potent.	Est. prod.	Est. potent.	Est. prod.
Production allowed, 25%:						
West Asher-Wanette	16,000	4,000	12,000	3,000	12,000	3,000
Konawa (Adjusted)	80,000	20,000	76,000	19,000	60,000	15,000
Miscl. (Chandler, et al)	8,000	2,000	28,000	7,000	28,000	7,000
Subtotal	104,000	26,000	116,000	29,000	100,000	25,000
Oklahoma City	600,000	130,037	600,000	134,760	600,000	146,933
Wells, in Prorated Areas, Not Prorated	10,000	10,000	10,000	10,000	10,000	10,000
Total—Prorated Areas	1,110,945	399,000	1,094,861	397,000	1,052,604	397,000
Outside Areas—Not Prorated	251,000	251,000	253,000	253,000	253,000	253,000
Total State	1,361,945	650,000	1,347,861	650,000	1,305,604	650,000

Schedule of Shut-in Time in Prorated Areas

Area	No. of days cement to set	No. of days of open flow for test	Days shut down	Total
Oklahoma City	7	1	57	65
East Earlsboro	7	1	41	49
Konawa	7	1	16	24
West Asher-Wanette	7	1	16	24
Marshall-Lovell	7	1	16	24
So. Earlsboro	7	1	16	24
Seminole et al	7	1	16	24

(g) The Commission finds from the evidence that the curtailment and the varying percentages as between pools prescribed in the schedule contained in paragraph (f) herein are necessary and reasonable in order to reduce production in this State to demand and in a manner least injurious to the producers and royalty owners as a whole, and in order to prevent unfair and unreasonable discrimination in favor of any one pool or common source of supply as against another. That the approximate number of wells in the pools described in this Petition is 3,085 and that their aggregate potential production is 1,111,000 barrels, or an average of 360.13 barrels per well per day. That outside of these enumerated pools and in the State at large are some 60,000 older and smaller wells producing in the aggregate and uncurtailed 251,000 barrels daily or an average of 4.18 barrels per well per day. That proration should be applied to the flush and semi-flush pools as distinguished from the old, small wells in the State for the following reasons, to-wit: First, that by reason of the large number of said old, small wells and the fact that they are scattered throughout the State, their proration and regulation would present an insuperable administrative difficulty in which it would be impossible to do equity and avoid discrimination as between them. Second: That their production per well is so small that the degree of curtailment which might be enforced would yield a negligible contribution to the amount of reduction [fol. 38] necessary in the State as a whole. Third: That the production per well is only 4.18 barrels, and in the case of some 30,000 of said small wells the per well production is only one barrel or a fraction thereof per day and because thereof said wells could not pay expenses of operation if their production should be reduced. Curtailing their output would cause thousands of them to be abandoned and their owners to suffer serious financial loss and would cause the waste of a valuable natural resource. Fourth: the great majority of said old small wells produce large quantities of water along with the oil and must be pumped regularly to prevent ruin by water encroachment. Fifth: As a general rule each of the old, small wells has an established and adequate pipeline outlet. Sixth: and, con-

versely, the objections in this paragraph enumerated in regard to old, small wells, do not apply in as great degree or at all in the case of the flush and semi-flush pools to which proration is sought to be applied. That because of the distinctions between the small wells of this State and the wells in the flush or semi-flush pools, as alleged in this paragraph, said small wells and the production therefrom should be excepted from the rules and regulations prayed for in this proceeding, in order to prevent unreasonable discrimination in favor of one or more common sources of supply of petroleum in this State as against another or other common sources of supply therein.

(h) The Commission finds that the varying percentages of curtailment as between pools as set forth in paragraph (f) of this Order are necessary, fair and reasonable because of the peculiar conditions in each case and in this, to-wit: that said pools are not all served in common by the same pipe lines and purchasers; that the outlet for certain of them is greater in proportion to potential production than in the case of others; that some of them are older than others and have been prorated longer than others, under orders of the Corporation Commission, with a consequent gr-ater reduction in potential flow and smaller possible production per well per day and are, therefore, accorded a higher percentage allowable production; that in many cases individual pools are served by local purchasers whose facilities cannot be extended to the others, and in certain of the pools the sand and water conditions prevent as great curtailment as is possible in others; and that in certain pools there is a more intensive drilling campaign and wells of larger capacity than in others. The Commission also finds that in the making of said schedule in paragraph (f) the producers and purchasers in all of said pools were consulted and meetings of all of said producers and purchasers were held at which all of the foregoing factors were considered and that said schedule represents the consensus of opinion of said producers and purchasers as to reasonableness of arrangement, necessity and convenience of producers and purchasers and equity as between the various common sources of supply, and was agreed to by all producers and purchasers except one.

(i) The Corporation Commission finds that by virtue of the facts, as herein set forth, (1) that it is necessary to curtail production in each of the pools herein mentioned in order to reduce the output of the State to consumption demands from the State as a whole, and thus to avoid waste, and (2) that the plan and schedule of percentages as contained in paragraph (f) are necessary to be observed in the case of such lease in order to prevent the inequitable or unfair taking by any person, firm or corporation from any one of said pools as a common source of supply and to prevent unreasonable discrimination in favor of any one such common source of supply as against another, and by virtue of the further fact that no one purchaser nor all of the purchasers together and no one pipeline or transporter nor all pipelines and transporters together is or are able or willing to purchase and/or transport all of the oil from all of said pools, it is necessary that each purchaser and trans- [fol. 39] porter from each of said pools conform and apportion his takings from each lease and pool to the percentages of potential output applicable thereto as set forth in the said schedule contained in paragraph (f) herein.

And said Commission further finds that if any purchaser or transporter should fail or refuse to so conform but should violate the plan as set forth in paragraph (f) by taking more than the due proportion as fixed by said plan, from any lease or leases in the said prorated areas, his action would have the immediate effect of discriminating against any of doing injury to surrounding owners by drainage and disporportionate use of the gas pressure and of creating discrimination as between pools and would have the further effect of hindering, impeding or disrupting the whole plan or scheme for the prevention of waste as adopted and promulgated by the Corporation Commission. For these reasons the purchasers and transporters now serving each or any of said pools, or who may hereafter do so, are hereby made parties to this proceeding and said purchasers and transporters are hereby prohibited from violating the rules and regulations and orders of the Commission as herein set forth or in any manner aiding or abetting any producer in so doing.

(j) The Corporation Commission further finds that in addition to the prevention of waste of crude oil, the estab-

lishment of the curtailment plan in this Order set forth will tend to conserve natural gas and gas pressure in the pools to which it shall be applied.

(k) The Corporation Commission finds that the output from the Oklahoma City pool should be limited to the reasonable market demand from said pool, which at the present time is about 16⅔% of the potential production, but which may increase to as much as 25% of the potential production from said Oklahoma City area and that, therefore, the maximum permitted production should be left at 25% of the potential as in existing orders, and that the Umpire and Operators Committee are authorized to fix, from time to time, the rate of curtailment necessary in said area in order to conform the actual production to the actual demand from that area, with a maximum allowance of 25% of potential; it being understood, however, that whatever demand there is from the Oklahoma City pool shall be prorated among all of the producing leases therein.

(l) With reference to East Earlsboro, the Corporation Commission finds that said pool is on the decline and, owing to the possibility that said decline may be more rapid than is now estimated, it should be ordered that a minimum allowed production of 20,000 barrels per day for the East Earlsboro pool be specified so that, if the application of a curtailment of 66⅔% to the potential should at any time reduce the allowed production below 20,000 barrels per day for the pool as a whole, the Umpire and Operators Committee shall have authority to readjust the percentage so that a minimum production of 20,000 barrels per day from the pool as a whole shall be allowed.

(m) The Corporation Commission finds that new pools or sands which may be opened up between July 1st and September 30th, 1930, should be curtailed 75% of potential until otherwise ordered by the Commission.

[fol. 40] (n) The Corporation Commission further finds that the allegations of the Petition filed herein are true and correct and that accordingly these conditions of waste now exist in said pools, and commission of waste is imminent, and the same should be prohibited and prevented, and the following rules and regulations are necessary, reasonable and appropriate for that purpose.

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

1

That the following specific orders be and they hereby are established as rules and regulations of this Commission to prevent the waste of petroleum in the Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando and Township 20 North, Range 4 West, and all pools in the Greater Seminole Area as shown by map attached to the Petition herein, and all other producing areas that may come into production during the months of July, August and September, 1930, all in the State of Oklahoma.

2

Ray M. Collins is hereby appointed as Umpire and Agent of the Corporation Commission to enforce the rules and regulations herein made, and he is hereby authorized to employ as many assistants as he shall deem necessary. To assist the Umpire in administering these rules and regulations, the following Committees of Operators are appointed as agents of the Corporation Commission for the following named pools respectively:

Allen Pool:

R. A. Griffith	Sinclair
C. H. Wright	Sunray
Geo. Moody	Mid-Continent

Lovell (Logan Co.) Pool:

H. D. Aggers	Wentz
Glenn Haroun	Sinclair
Mr. Bond	Shell
Mr. Church	J. E. Crosbie, et al.

Greater Seminole (and East and South Earlsboro and Konawa):

J. S. Sidwell	Prairie
J. J. Conry	Carter
R. F. McArthur	Barnsdall
Kenneth-Winship	Gypsy
L. C. Hawkins	Magnolia

Oklahoma City Pool:

M. J. Kirwan	I. T. I. O.
J. S. Sidwell	Prairie
Wirt Franklin	Cromwell-Franklin
Ralph Roark	Shell
Glenn Haroun	Sinclair

[fol. 41] West Asher-Wanette:

Ralph Roark	Shell
J. S. Sidwell	Prairie
M. J. Kirwan	I. T. I. O.

Where percentage proration is applied a gauge of producing wells shall be taken by the Umpire or under his supervision in the following manner: the gauge to determine potential shall be taken by each operator in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken between the hours of seven A. M. on the day set by the Umpire and seven A. M. on the following day. Prior to the taking of such gauge and in respect of each producing lease covered hereby, the Umpire shall appoint a representative of an operator owning a lease adjoining the particular property to be gauged, and shall notify the operator whose property is to be gauged of the name of the representative, such notification to be given prior to the taking of such gauge. It shall be the positive duty of such representative to remain on the lease that is being gauged throughout the entire day that the gauge is being taken to witness the gauging of the production therefrom; and immediately upon the completion of such gauge, such witness and the operator whose property was gauged shall file a written statement with the Umpire showing the production of said lease, and of each well thereon for the day said gauge is taken. The production so shown shall constitute the potential for said lease until the next gauge is taken. During the time this Order is in force, a similar gauge of each property shall be taken from time to time as the Umpire may designate but not less than once each month, except that in the entire Greater Seminole area, aside from South Earlsboro, East Earlsboro, East Little River, Sasakwa, Konawa, West Asher-Wanette, Earlsboro Townsite and Wilcox wells in Allen pools, the gauge may, upon direction of the Um-

pire, be determined by applying the proper decline curve for each lease so gauged.

4

Oklahoma oil production shall be limited to an average of 650,000 barrels per day during each of said months of July, August and September, 1930, plus such increase from the Oklahoma City pool as the reasonable market demand may justify and within the maximum of 25% of potential production, and said figure of 650,000 barrels per day represents the reasonable market demand during said period for the State as a whole and same shall be used as the basis for the limitation of production in this State until the Corporation Commission shall find from evidence that the same should be changed. The curtailment of production in Oklahoma shall be accomplished by a proration of the following producing areas and any extensions thereof, to-wit: Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando and Township 20 North, Range 4 West, and all pools in the Greater Seminole Area as shown by map attached to Petition herein.

5

Each person, firm or corporation having the right to drill into and produce oil from any of the pools or areas and extensions thereof that are covered by this order may take from such pool or area and extensions thereof only such proportion of all crude oil and petroleum that may be produced therefrom under this Order as the production of the well or wells of such person, firm or corporation in said pool or area bears to the total potential production of such pool or area. In the case of each such pool or area the Umpire and the Operators' Committee for said pool or area shall determine whether the production shall be [fol. 42] curtailed on a time basis or on the basis of a percentage of potential daily production but such decision shall be reported by the Umpire to this Commission for approval and in no event shall any pool and its extensions be permitted to produce more than its allowable output as fixed by this Order.

6

Beginning July 1, 1930, and continuing until and including September 30th, 1930, the production of all wells in the following pools shall be curtailed 33 1-3% of their potential production: Allen Dome (Wilcox and Cromwell sands), Bowlegs, Carr City, Earlsboro (old), Earlsboro Townsite, Little River, East Little River, Marshall-Lovell, Maud, Mission, Sasakwa, Searight, Seminole, East Seminole and St. Louis.

7

Beginning July 1st, 1930, and continuing until and including September 30, 1930, the allowable production of all wells in the Oklahoma City pool shall be that proportion of their potential production that the reasonable market demand from the pool as a whole shall bear to the potential production of the pool as a whole. Provided, that the maximum allowed production shall be 25 percent of potential production; and, Provided further, that whatever demand for petroleum from the Oklahoma City pool that may exist shall be prorated and allocated among all the producing leases. In case the reasonable market demand shall at any time be less than 25% of the potential production the Umpire and Operators' Committee shall fix such percentage of potential production as will allow a production equal to said reasonable market demand.

8

Beginning July 1, 1930, and continuing until and including September 30, 1930, the production of all wells in the East Earlsboro pool shall be curtailed 66 2-3% of potential production but if at any time the potential production should decline to such an extent that the application of a curtailment of 66 2-3% would reduce the allowed production of the pool as a whole below 20,000 barrels per day, then and in that event the Umpire and Operators' Committee shall fix a percentage of potential production which will allow the pool as a whole to produce a minimum of 20,000 barrels per day.

9

Beginning July 1, 1930, and continuing until and including September 30, 1930, the production of all wells in the

South Earlsboro pool shall be curtailed 66 2-3% of potential production.

10

Beginning July 1, 1930, and continuing until the including September 30, 1930, the production of all wells in the following named pools and any extensions thereof, together with any new pools that may be opened during said period, shall be curtailed 75% of potential production; West Asher-Wanette, Konawa, Chandler, West Perry, Orlando and Township 20 North, Range 4 West.

11

Where shortages and overages have occurred under previous Orders of this Commission, the same shall be carried [fol. 43] forward and adjusted, during the month of July. Any lease showing an average of one barrel or more at August 1st or at the first day of any month thereafter during the life of this Order shall be immediately reported by the Umpire under oath to the Corporation Commission as a basis for citation and such report shall contain in addition to the location of the property and the amount of the overage, the names and addresses of the lessee, the purchaser of the oil and the transporter. Leases which are being gauged according to a decline curve and showing a shortage at the end of any month of more than two days allowed production shall take as their potential for the following month the daily average production of the last ten days of the month. And in the case of such leases, shortages of two days allowable production or less shall be credited on the next month's allowed production.

12

To establish equality between producing wells and drilling wells, each well now drilling in any of said areas, or which may be commenced in said areas or in any new areas prior to September 30, 1930, shall take a delay prior to being brought into production, equal to the accumulated shut-in time and accumulated equivalent time resulting from pinching of producing wells from the beginning of the proration period in each pool, said period of delay to be computed in each instance after allowing seven (7) days for the cement to set: Provided the maximum shut-in time

in each of said pools shall be according to the following schedule:

Area	No. of days cement to set	No. of days of open flow for test	Days shutdown	Total
Oklahoma City	7	1	57	65
East Earlsboro	7	1	41	49
Konawa	7	1	16	24
West Asher-Wanette	7	1	16	24
Marshall-Lovell	7	1	16	24
South Earlsboro	7	1	16	24
Seminole, et al	7	1	16	24

Previous orders of the Corporation Commission as to wells now completed but not on production shall be continued in effect as to the shutdown requirements therein.

13

That all purchasers and carriers of oil in the State of Oklahoma be and they are hereby forbidden to purchase or carry oil produced in violation of these Orders of the Commission.

14

In the Konawa, East Earlsboro and South Earlsboro pools, so long as the percentage method of curtailment is used, the same shall be modified as to leases of small production as follows:

Percentage Plan for Konawa Pool

Size of wells

(Average bbls. per well per lease)	Per cent of potential production allowed
Over 400 Barrels	25%
300-400 "	30%
[fol. 44] 200-300 Barrels	35%
100-200 Barrels	50%
Less than 100 Bbls.	66⅔%

Percentage Plan for South Earlsboro and East Earlsboro

Over 300 Barrels	33⅓%
200-300 "	40%
100-200 "	50%
Less than 100 Bbls.	66⅔%

Jurisdiction of this cause is hereby retained by the Corporation Commission and notice is hereby given that supplemental and ancillary orders may be made herein from time to time as required by new developments and as instructions to the Umpire and Operators Committees. When in the judgment of the Umpire or Any Operators' Committee any such supplemental or ancillary order shall become necessary the facts supporting the necessity therefor and the reasonableness thereof shall be reported to the Commission for approval, and no exception to these rules and regulations shall be allowed by the Umpire unless approved by such an ancillary order.

Done at Oklahoma City this 30th day of June, 1930.

Corporation Commission of Oklahoma. C. C. Childers, Chairman. Fred Capshaw, Commissioner. E. R. Hughes, Commissioner.

Attest: E. D. Hicks, Jr., Secy.

STATE OF OKLAHOMA,
Oklahoma County, ss:

I, E. D. Hicks, Jr., Secretary of the Corporation Commission of Oklahoma, do hereby certify that the foregoing is a true and correct copy of the Commission's Order No. 5189 issued under date of June 30th, 1930, in Cause No. 10146, the original of which is now on file in this department.

In testimony whereof I hereunto set my hand and affix the seal of the corporation Commission of Oklahoma.

Done in Oklahoma City, Oklahoma, this the 28th day of October, 1930.

(Signed) E. D. Hicks, Jr., Secretary Corporation Commission of Oklahoma. (Seal.)

[fol. 45] EXHIBIT "B"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10,146. Order No. 5292

In the matter of the Application of Ray M. Collins for Rules and Regulations to be Established by the Commission to Prevent the Waste of Petroleum in the Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando, and Township 20 North, Range 4 West, and all Pools in the Greater Seminole Area as Shown by the Map Attached to the Petition Herein, and all Other Producing Areas That May Come Into Production During the Months of July, August, and September, 1930, all in the State of Oklahoma

Order Modifying the Original Order Issued in This Cause and Amending the Rules and Regulations Established Thereby

Comes now Ray M. Collins and presents his written application in person and by counsel, and this matter being set for hearing on this day and the Corporation Commission, having heard and considered the evidence of the applicant and the evidence of any and all persons opposing said application, and being advised in the premises, finds as follows:

(a) That the lands covered and affected by this application and which will be subject to the amended rules and regulations established by this order are those described in the original petition herein and in the map attached thereto.

(b) That notice by publication on all persons or classes interested in this proceeding and in the rules and regulations to be established hereby has been given as required by law in a newspaper of general circulation in this state and that, in addition, reasonable notice in writing has been served personally on all persons, firms and corporations complained against in this proceeding.

(c) That since the issuance of the original order herein, the potential production of crude oil in the State of Oklahoma has increased to 1,481,118 barrels per day, while the reasonable market demand has decreased from 650,000 barrels to 550,000 barrels per day, a decrease of 100,000 barrels in daily average demand since June 30th.

(d) That it is, therefore, necessary to further curtail the output of crude petroleum in Oklahoma for the month of September 1930 in order to prevent waste as defined by the laws of this State, and that the original order herein should be modified by reducing the percentages of permitted production in the pools herein mentioned by 25% according to the following schedule:

[fol. 46] Potential and Allowed Production, State of Oklahoma

Field	September, 1930 Estimated potential	Estimated production
Production Allowed, 50%:		
Allen (Wilcox)	9,000	4,500
Allen (Cromwell)	17,927	8,964
Bowledgs	28,327	14,164
Carr City	10,494	5,247
Earlsboro (old)	28,665	14,332
Earlsboro Townsite	10,000	5,000
Little River	46,528	23,264
East Little River	22,000	11,000
Marshall-Lovell	5,650	2,825
Maud	5,712	2,856
Mission	14,673	7,337
Sasakwa	9,500	4,750
Searight	13,205	6,602
Seminole	28,470	14,235
East Seminole	4,145	2,072
St. Louis	38,972	19,486
Subtotal	293,268	146,634
Production Allowed, 25%:		
East Earlsboro	40,000	15,000*
South Earlsboro	35,000	8,750
Subtotal	75,000	23,750

[* Min.]

Field	September, 1930 Estimated potential	Estimated production
Production Allowed, 18¾%:		
West Asher-Wanette	35,000	6,563
Konawa (adjusted)	68,000	12,750
Subtotal	103,000	19,313
Production Allowed, Adjusted Maximum:		
Tatums	12,000	2,500
Chandler	30,000	2,500
West Perry	1,200	600
Orlando	850	400
Twp. 20 No.—Range 4 West	800	400
Subtotal	44,850	6,400
Oklahoma City	700,000	88,903
Wells, in Prorated Areas, Not Prorated	5,000	5,000
Total—Prorated Areas	1,221,118	290,000
Outside Areas—Not Prorated	260,000	260,000
Total State	1,481,118	550,000

[fol. 47] (e) The Corporation Commission further finds that by applying a uniform percentage reduction of the original percentages named in the Order of June 30th, the said prorated pools will be maintained in the same relation to each other as under said original order, and that unfair discrimination as between said pools and as between the leases therein will be prevented, and that the adoption of said schedule set forth in paragraph (d) is necessary in order to prevent waste of petroleum.

(f) The Corporation Commission further finds that the reduction of permitted percentages of potential should be made flexible so that, should the demand for Oklahoma crude increase prior to September 30, 1930, the percentage of reduction herein set forth may be reduced upon application of the Umpire supported by evidence.

(g) That accordingly these conditions of waste now exist in said pools or are imminent and such waste should be prevented.

It is, therefore, ordered by the Corporation Commission of the State of Oklahoma as follows:

1

That the original order herein be and the same is hereby modified to the following extent, and that the following specific orders be and they hereby are established as rules and regulations of this Commission to prevent the waste of petroleum in the Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen-Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando and Township 20 North, Range 4 West, and all pools in the Greater Seminole Area as shown by map attached to the original petition herein, and the extension to the Tatums pool and all other producing areas that may come into production during the month of September, 1930, all in the State of Oklahoma.

2

Oklahoma oil production shall be limited to an average of 550,000 barrels per day from September 1, to September 30, 1930, plus such increase from the Oklahoma City pool as the reasonable market demand may justify and within the maximum of 18¾% of potential production, and said figure of 550,000 barrels per day represents the reasonable market demand during said period for the state as a whole and same shall be used as the basis for the limitation of production in this State, until September 30, 1930. The curtailment of production in Oklahoma shall be accomplished by a proration of the following producing areas and any extensions thereof, to-wit: Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Asher-Wanette, Chandler, West Perry, Orlando and Township 20 North, Range 4 West, and all pools in the Greater Seminole Area as shown by map attached to original petition herein, and the Tatums Extension as in this order described.

3

Each person, firm or corporation having the right to drill into and produce oil from any of the pools or areas and ex-

tensions thereof that are covered by this order may take from such pool or area and extensions thereof only such proportion of all crude oil and petroleum that may be produced therefrom under this order as the potential production of the well or wells of such person, firm or corporation in said pool or area bears to the total potential production of such pool or area. In the case of each such [fol. 48] pool or area the Umpire and the Operators' Committee for said pool or area shall determine whether the production shall be curtailed on a time basis or on the basis of a percentage of potential daily production but such decision shall be reported by the Umpire to this Commission for approval and in no event shall any pool and its extensions be permitted to produce more than its allowable output as fixed by this Order.

4

Beginning September 1, 1930, and continuing until and including September 30, 1930, the production of all wells in the following pools shall be curtailed 50% of their potential production: Allen Dome (Wilcox and Cromwell sands), Bowlegs, Carr City, Earlsboro (old), Earlsboro Townsite, Little River, East Little River, Marshall-Lovell, Maud, Mission, Sasakwa, Searight, Seminole, East Seminole and St. Louis.

5

Beginning September 1, 1930, and continuing until and including September 30, 1930, the allowable production of all wells in the Oklahoma City pool shall be that proportion of their potential production that the reasonable market demand from the pool as a whole shall bear to the potential production of the pool as a whole. Provided, that the maximum allowed production shall be 18¾% of potential production; and, provided further, that whatever demand for petroleum from the Oklahoma City pool may exist shall be prorated and allocated among all the producing leases. In case the reasonable market demand shall at any time be less than 18¾% of the potential production the Umpire and Operators' Committee shall fix such percentage of potential production as will allow a production equal to said reasonable market demand.

6

Beginning September 1, 1930, and continuing until and including September 30, 1930, the production of all wells in the East Earlsboro pool shall be curtailed 75% of potential production, but if at any time the potential production should decline to such an extent that the application of a curtailment of 75% would reduce the allowed production of the pool as a whole below 15,000 barrels per day, then and in that event the Umpire and Operators' Committee shall fix a percentage of potential production which will allow the pool as a whole to produce a minimum of 15,000 barrels per day.

7

Beginning September 1, 1930, and continuing until and including September 30, 1930, the production of all wells in the South Earlsboro pool shall be curtailed 75% of potential production.

8

Beginning September 1, 1930, and continuing until and including September 30, 1930, the production of all wells in the following pools and any extensions thereof shall be curtailed 81¼% of potential production: West Asher-Wanette and Konawa.

9

Beginning September 1, 1930, and continuing until and including September 30, 1930, the production of the extension of the Tatums Pool, said extension being located in Sections 18 and 19, Township 1 South, Range 2 West and Sections 13 and 24, Township 1 South, Range 3 West, shall be curtailed to a maximum production of 2500 barrels per day, as per the following schedule: Wells capable of producing 400 barrels per day or more shall be allowed a maximum production of 100 barrels per well per day; and wells not capable of producing 400 barrels or more per day shall be allowed a maximum production of 50 barrels per well per day. In the event that the above schedule of [fol. 49] maximum production per well does not hold the total production of the area within the maximum of 2500

barrels per day for the whole area, the Umpire and Operators' Committee shall adjust and fix said per well maximums at such figures as will keep the production of the whole area within the allowed 2500 barrels per day.

10

Beginning September 1, 1930, and continuing until and including September 30, 1930, the production of the Chandler Pool and any extensions thereof shall be curtailed to a maximum production of 2500 barrels per day, with the provision that the maximum production from each and every well shall be limited to 100 barrels per day as a maximum. In the event that the above schedule of maximum production per well does not hold the total production of the area within the maximum of 2500 barrels per day for the whole area, the Umpire and Operators' Committee shall adjust and fix said per well maximum at such figure as will keep the production of the whole area within the allowed 2500 barrels per day.

11

Beginning September 1, 1930, and continuing until and including September 30, 1930, the production of the following named pools and any extensions thereof shall be limited to the following maximums: West Perry, 600 barrels per day; Orlando, 400 barrels per day; and Township 20 North, Range 4 West, 400 barrels per day.

12

Beginning September 1, 1930, and continuing until further order of this Commission, all wildcat wells completed for crude oil production shall be limited to a maximum daily production of fifty barrels each, so long as no other well is started on any other lease and within one-half (½) mile of any such producing wildcat well. If a well is started on any other such lease in the said drainage area, such discovery well shall be permitted to produce to capacity until the second well is completed in the same formation unless the operators in said drainage area agree upon and submit to this Commission for approval a conservation plan of operation for said field; if no such plan is agreed upon and submitted as aforesaid and such subsequent well or wells shall be completed as producers, then all wells

shall be curtailed to 50 barrels each day until further order of this Commission.

13

That all purchasers and carriers of oil in the State of Oklahoma be and they are hereby forbidden to purchase or carry oil produced in violation of these orders of the Commission.

14

In the Konawa, East Earlsboro and South Earlsboro pools, so long as the percentage method of curtailment is used, the same shall be modified as to leases of small production as follows:

Percentage Plan for Konawa Pool

Size of Wells

Average bbls. per well per lease	Per cent of potential production allowed
Over 400 barrels	18¾%
300-400 barrels	22½%
200-300 "	26¼%
100-200 "	37½%
Less than 100 Bbls.	50%

[fol. 50] Percentage Plan for South Earlsboro and East Earlsboro

Size of Wells

Average bbls. per well per lease	Per cent of pot. prod. allowed
Over 300 barrels	25%
200-300 "	30%
100-200 "	37½%
Less than 100 Bbls.	50%

15

Jurisdiction of this cause is hereby retained by the Corporation Commission and notice is hereby given that supplemental and ancillary orders may be made herein from time to time as required by new developments and as instructions to the Umpire and Operators' Committee. When

in the judgment of the Umpire or any Operators' Committee any adjustment or fixing of percentages or well production as provided in this order shall be proper, or as any such supplemental or ancillary order shall become necessary the facts supporting the necessity therefor and the reasonableness thereof shall be reported to the Commission for approval, and no exception to these rules and regulations shall be allowed by the Umpire, nor shall any adjustment of percentages or well production become effective, unless approved by such an ancillary order of this Commission. Except as modified by this Order, the original order, rules and regulations issued by the Corporation Commisssion on June 30, 1930, in this cause shall remain in full force and effect until September 30, 1930. Should the demand for crude oil from the State of Oklahoma increase prior to September 30, 1930, to such an extent as to permit a greater outlet from the pools herein mentioned, the Umpire shall report the facts to the Commission, together with the recommended percentages, and the Corporation Commission hereby gives notice that such revised percentages, may be substituted for the 25% additional reduction provided for in this order.

Done at Oklahoma City this the 30th day of August, 1930.

Corporation Commission of Oklahoma. (Signed) C. C. Childers, Chairman. E. R. Hughes, Commissioner.

Attest: E. D. Hicks, Jr., Secy. (Seal.)

[fol. 51] STATE OF OKLAHOMA,
Oklahoma County, ss:

I, E. D. Hicks, Jr., Secretary of the Corporation Commission of Oklahoma, do hereby certify that the foregoing is a true and correct copy of the Commissioner's order No. 5246 issued in Cause No. 10146 under date of July 24th, 1930, the original of which is now on file in this department.

In testimony whereof I hereunto set my hand and affix the seal of the Corporation Commission of Oklahoma.

Done in Oklahoma City, Oklahoma, this the 28th day of October, 1930.

E. D. Hicks, Jr., Secretary Corporation Commission of Oklahoma. (Seal.)

[fol. 52] EXHIBIT "C"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10146. Order No. 5337

In the Matter of the Application of RAY M. COLLINS for Rules and Regulations to be Established by the Commission to Prevent the Waste of Petroleum in the Oklahoma City, East Earlsboro, South Earlsboro, Marshall-Lovell, Allen Dome, Sasakwa, Konawa, St. Louis, West Aster-Wanette, Chandler, West Perry, Orlando, and Township 20 North, Range 4 West, and All Pools in the Greater Seminole Area as Shown by the Map Attached to the Petition Herein, and All Other Producing Areas That May Come Into Production During the Months of July, August, and September, 1930, All in the State of Oklahoma

Order No. 5337

Upon consideration of the verified application of Ray M. Collins in the above entitled cause and of the matters and things now adduced in support thereof, the Commission finds that the potential production of crude oil in the State of Oklahoma far exceeds the market demand and transportation facilities therefor, that by reason of pending litigation it is inexpedient to undertake at this time a new investigation into the matters involved in the Orders to which reference is hereinafter made, but that to prevent waste in the production of crude oil in the State of Oklahoma it is necessary and proper that the proration plan now in force be carried forward temporarily by order supplemental to those now in force until a decision upon the rights and powers of this Commission has been reached by the Courts, and that it is reasonable to assume that a decision thereon will be handed down in the near future.

It is therefore ordered that Order No. 5189 of this Commission as modified by Orders No. 5246 and 5292 and all supplemental orders be and the same is hereby extended in force until and including the 10th day of October, 1930.

[fol. 53] Done by the Corporation Commission of Okla-

homa at its office in the State Capital at Oklahoma City, Oklahoma, this 30th day of September, 1930.

Corporation Commission of Oklahoma. C. C. Childers, Chairman. Fred Capshaw, Commissioner. E. R. Hughes, Commissioner.

Attest: E. D. Hicks, Jr., Secy.

Certificate

STATE OF OKLAHOMA,
Oklahoma County, ss:

To all to whom these presents shall come, Greetings:

I, E. D. Hicks, Secretary of the Corporation Commission of Oklahoma, do hereby certify that the following hereto attached is a true and correct copy of Order No. 5337, original of which is on file and matter of record of this office.

In testimony whereof I hereunto set my hand and affix the seal of the Corporation Commission of Oklahoma.

Done in Oklahoma City this the 2nd day of October, 1930.

E. D. Hicks, Jr., Secretary Corporation Commission of Oklahoma. (Seal.)

[fol. 54] EXHIBIT "D"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326. Order No. 5369

In the Matter of the Application of WIRTH FRANKLIN for Rules and Regulations to be Established by the Commission to Prevent Waste of Petroleum in the Producing Oil Fields of the State of Oklahoma

Order

Comes now petitioner herein and various and sundry producers of oil in the State of Oklahoma, and this matter having been set for hearing on this 10th day of October, 1930, and the Commission having heard and considered the evidence of the petitioner and sundry other persons, and the evidence of any and all persons opposing the petition and the supplemental petition herein, and the Commission having made an investigation of the facts alleged and of the conditions in the oil fields of Oklahoma, and being fully advised in the premises, finds as follows:

(a) That areas to be covered by the rules and regulations herein prayed for are all of the oil producing areas in the State of Oklahoma and those new sands or areas which may be brought into production during the months of October, November and December, 1930.

(b) That notice by publication on all persons or classes interested in this proceeding and in the rules and regulations to be established hereby has been give- as required by law, in a newspaper of general circulation in this State, and that, in addition, reasonable notice in writing has been served personally on all persons, firms and corporations known to petitioner to be interested in this proceeding and due proof of service of notice has been made and filed herein.

(c) The Corporation Commission finds from the evidence that there is an overproduction of crude oil in the State of Oklahoma attended by waste of gas and of gas pressure and that the producers of crude oil in the oil pools of Oklahoma are threatening to and will, unless restrained by the rules and regulations of the Corporation Commission, commit physical waste of crude oil, economic waste, underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands, and that the commission of such waste is so imminent in each of the areas involved in this proceeding that orders, rules and regulations of this Commission are necessary in order to prevent such waste.

The Commission further finds that there is a general overproduction and importation of crude and refined petroleum in the United States, and that this fact tends to reduce the amount of crude oil that can be produced in the State of Oklahoma without waste; that the potential production of crude oil in the United States is at this time approximately 10,000,000 barrels per day, and imports of crude and refined petroleum aggregate about 300,000 barrels per day, thus creating a total possible current supply of 10,300,000 barrels per day as against an approximate daily demand for domestic use and export of 2,800,000 barrels per [fol. 55] day. That by reason of this great over supply and threatened waste, potential production is now being curtailed in Oklahoma and other producing regions, and

unless there is a continuance of curtailment of production in the areas involved herein, the conservation measures now in effect in the other oil producing states may be abandoned, thus causing large quantities of petroleum to be produced in such other state in excess of their local demand and forced upon the market to the demoralization of the industry and a consequent increase in waste in this State and an undue exhaustion of our oil resources. The Commission finds that this petroleum situation constitutes a great state emergency and that the laws of the State of Oklahoma and the powers of the Corporation Commission should be availed of to remove the same.

(d) The Commission further finds from the evidence that, in addition to the excess of potential and actual production and imports over current demand, there are stocks of petroleum on hand in the United States aggregating more than 685,000,000 barrels, which stocks are excessive and beyond the needs of the petroleum industry. That by reason of the excessive supply thus indicated, the purchasers of crude oil in Oklahoma are unwilling to purchase crude oil in Oklahoma for storage purposes in any amount that would be adequate to take care of the surplus of potential production over current demand and that, therefore, there is not sufficient empty tankage available to take care of said excess and unless potential production in Oklahoma is curtailed, much oil would necessarily go to earthen storage where it would evaporate and escape and thus be wasted. The Commission further finds that the storage of oil in Oklahoma under existing conditions would involve waste for the further reason that there is already an excess of stored oil locally and, there is being an oversupply, oil now stored would have to remain in storage for a great length of time and would deteriorate.

(e) The Commission finds from the evidence that in order to curtail the production of crude oil in Oklahoma in a manner to prevent the commission of waste and to protect the coequal rights of producers in each pool, it will be necessary to enforce proportionality of taking from the wells and leases in each of the pools where the potential production thereof exceeds the reasonable market demand therefrom, and that unless such proportionality is required, injustice would be done as between producers in the same pool in that drainage would occur from the less active leases or wells to the more active leases or wells, and un-

due proportion of the gas pressure would be utilized by some operators to the detriment of others and unfair discrimination would arise as between pools.

(f) The Commission further finds that the potential daily production of crude oil from the wells in Oklahoma during the month of October, 1930, is and will be approximately 3,633,478 barrels and that during the months of November and December, 1930, the said potential daily production will be 4,142,872 barrels and 4,244,294 barrels respectively, and that the daily demand for crude oil from Oklahoma is and will be approximately 550,000 barrels in October, 545,000 barrels in November and 535,000 barrels in December, 1930. That therefore, and by reason of the facts found in this order, the potential production from each of the pools and classes of pools involved in this proceeding is so far in excess of the reasonable market demand that the full potential production cannot be produced without waste.

[fol. 56] The Commission further finds that the above mentioned potential production is only that from the wells which would be permitted to produce under this and pre-existing orders of this Commission and does not include wells which by said orders are required to remain shut-in for the length of time therein prescribed; that if no restraint were placed upon producing wells or wells now completed or upon wells hereafter drilled during the months of October, November and December, the potential production of the State of Oklahoma would be much greater than that above stated and would exceed all transportation and marketing facilities and reasonable market demands to such an extent as to force large quantities of oil into earthen storage in this State and otherwise cause waste of a character prohibited by the laws of the State of Oklahoma. In order to prevent such waste, the Commission finds that it is necessary to curtail the production from the pools in this State and each of them during the said months of October, November and December, 1930, and according to the subjoined schedule showing the classes of pools to be prorated, the potential production of each, the estimated daily production of each under proration and the percentage of potential production allowable in each pool and the resulting, total production, under proration, for the said three (3) months period.

[fol. 57] Suggested Potential and Allowed Production of Crude Oil—State of Oklahoma
Proration Schedule**—October 1, 1930, to December 31, 1930

	October		November		December	
	Estimated Potential	Estimated Production	Estimated Potential	Estimated Production	Estimated Potential	Estimated Production
Class A Pools	259,280	202,965	257,040	201,770	254,950	200,725
Class B:						
Allen (Wilcox)	8,825	4,413	8,335	4,168	7,920	3,960
Allen (Cromwell)	17,389	8,695	16,867	8,433	16,361	8,180
Bowlegs	27,477	13,734	26,653	13,326	25,853	12,927
Earlsboro (proper)	27,805	13,903	26,971	13,485	26,162	13,081
Earlsboro Townsite	10,000	5,000	9,700	4,850	9,400	4,700
Little River	45,132	22,566	43,778	21,889	42,465	21,232
East Little River	23,482	11,741	22,700	11,350	22,000	11,000
Marshall-Lovell	5,000	2,500	5,000	2,500	4,500	2,250
Maud	5,541	2,771	5,375	2,688	5,214	2,607
Mission	14,233	7,117	13,806	6,903	13,392	6,696
Sasakwa	10,300	5,150	9,785	4,893	9,295	4,648
Searight	12,809	6,405	12,425	6,212	12,052	6,026
Seminole	27,616	13,808	26,788	13,394	25,984	12,992
East Seminole	4,021	2,011	3,900	1,950	3,783	1,892
St. Louis	37,803	18,902	36,669	18,334	35,569	17,784
Subtotal	277,433	138,716	268,752	134,375	259,950	129,975
Class C:						
Carr City	22,415	6,936	25,965	7,783	28,510	8,380
South Earlsboro	36,000	9,000	33,000	8,250	30,000	7,500
Subtotal	58,415	15,936	58,965	16,033	58,510	15,880

Class D:						
Konawa	89,500	18,188	88,365	17,933	84,234	17,117
Class E:						
East Earlsboro	45,000	15,000	43,000	15,000	40,000	15,000
West Asher-Wanette	50,000	7,200	45,000	7,200	41,000	7,200
Subtotal	95,000	22,200	88,000	22,200	81,000	22,200
Class F:						
Tatums	18,000	4,000	15,000	4,200	12,000	4,000
Chandler	25,000	2,500	25,000	2,500	25,000	2,500
Subtotal	43,000	6,500	40,000	6,500	37,000	6,500
Class G:						
West Perry	1,200	600	1,150	600	1,100	600
Orlando	850	400	825	400	800	400
Twp. 20 N., R. 4 W	800	400	775	400	750	400
Subtotal	2,850	1,400	2,750	1,400	2,650	1,400
Class H:						
Oklahoma City	2,800,000	131,095	3,319,000	134,589	3,446,000	131,003
Wildcat Wells	3,000	3,000	10,000	200	10,000	200
New Wells (Outside of Oklahoma City)	Free Production.					
For Testing	5,000	5,000	5,000	5,000	5,000	5,000
Unprorated Small Wells in Prorated Areas	5,000	5,000	5,000	5,000	5,000	5,000
Total State	3,638,478	550,000	4,142,872	545,000	4,244,294	535,000

**NOTE.—See detailed description of curtailment procedure for each class of pools.

[fol. 58] (g) The Commission finds from the evidence that the curtailment and the varying percentages as between pools prescribed in the schedule contained in paragraph (f) herein are necessary and reasonable in order to reduce production in this State to the reasonable market demand and in a manner least injurious to the producers and royalty owners as a whole, and in order to prevent unfair and unreasonable discrimination in favor of any one pool or common source of supply as against another.

The Commission finds that the varying percentages of curtailment as between pools as set forth in paragraph (f) of this order are necessary, fair and reasonable because of the peculiar conditions in each case and in this, to-wit: that said pools are not all served in common by the same pipelines and purchasers; that the reasonable market demand from certain of them is greater in proportion to potential production than in the case of others; that some of them are older than others and have been prorated longer than others, under orders of the Corporation Commission, with a consequent greater reduction in potential flow and smaller possible production per well per day and are, therefore, accorded a higher percentage allowable production; that in many cases individual pools are served by local purchasers whose facilities cannot be extended to the others, and in certain of the pools the sand and water conditions prevent as great curtailment as is possible in others, and that in certain pools there is a more intensive drilling campaign and wells of larger capacity than in others. The Commission also finds that in the making of said schedule in paragraph (f) the producers and purchasers in all of said pools were consulted and meetings of said producers and purchasers were held at which all of the foregoing factors were considered and that said schedule represents the consensus of opinion of said producers and purchasers as to reasonableness of arrangement, necessity and convenience of producers and purchasers and equity as between the various common sources of supply.

The Commission finds that the basis of classification of pools for the application of the varying percentages of curtailment as shown by the schedule in paragraph (f) herein is the existing relation between the potential production of each pool and the amount of crude oil which can

be produced from said pool without waste. That because said relation is not the same in all the pools involved, the percentages of curtailment must necessarily vary as between pools. A uniform percentage applied to all pools would result in the permitted production from some of them being less than the reasonable market demand therefrom, while in others the permitted production resulting from such uniform percentage would exceed the amount which could be produced therefrom without waste.

(h) The Corporation Commission finds that by virtue of the facts, as herein set forth, (1) that it is necessary to curtail production in each of the pools herein mentioned in order to reduce the output of the State to reasonable market demands from the State as a whole, and thus to avoid waste, and (2) that the plan and schedule of percentages as contained in paragraph (f) are necessary to be observed in the case of each lease in order to prevent the inequitable or unfair taking by any person, firm or corporation from any one of said pools as a common source of supply and to pre-
[fol. 59] vent unreasonable discrimination in favor of any one such common source of supply as against another, and by virtue of the further fact that no one purchaser nor all of the purchasers together and no one pipeline or transporter nor all pipelines and transporters together is or are able or willing to purchase and/or transport all of the oil from all of said pools, it is necessary that each purchaser and transporter from each of said pools conform and apportion his takin-s from each lease and pool to the percentages of potential output applicable thereto as set forth in the said schedule contained in paragraph (f) herein.

And said Commission further finds that if any purchaser or transporter should fail or refuse to so conform but should violate the plan as set forth in paragraph (f) by taking more than the due proportion as fixed by said plan, from any lease or leases in the said prorated areas, his action would have the immediate effect of discriminating against and of doing injury to surrounding owners by drainage and disproportionate use of the gas pressure and of creating discrimination as between pools and would have the further effect of hindering, impeding or disrupting the whole plan or scheme for the prevention of waste as

adopted and promulgated by the Corporation Commission. For these reasons the purchasers and transporters now serving each or any of said pools, or who may hereafter do so, are hereby made parties to this proceeding and said purchasers and transporters are hereby prohibited from violating the rules and regulations and orders of the Commission as herein set forth or in any manner aiding or abetting any producer in so doing.

(i) The Corporation Commission further finds that in addition to the prevention of waste of crude oil, the establishment of the curtailment plan in this order set forth will tend to conserve natural gas and gas pressure in the pools to which it shall be applied.

(j) The Commission finds that since the making and issuance of Order 5189 in Cause No. 10,146, the potential production of the Oklahoma City pool has increased to approximately 2,800,000 barrels per day and, by reason of the large number of wells now drilling or awaiting production in said pool, such potential will probably increase to 3,319,000 barrels per day in November and to 3,446,000 barrels per day in December. That the reasonable market demand for oil in said pool heretofore existing has been so small in proportion to the present potential production that it is necessary, if possible, that the market outlet from said pool be increased in order to prevent unreasonable discrimination against said Oklahoma City pool. In this connection, the Commission finds that a number of purchasing companies desire to and have already reduced the amount of their purchases in the so-called older pools in the State not heretofore prorated under order of this Commission, and that said purchasers desire to purchase a greater amount of oil in the Oklahoma City pool than they have heretofore taken. The Commission further finds that, by reason of the readjustment of purchases as herein stated as between pools not heretofore prorated and the Oklahoma City pool, the potential production of said pools not heretofore prorated will exceed the reasonable market demand therefrom, and that it is necessary to now prorate said older pools, which are hereby designated as "Class A" pools. That it is necessary to curtail the output from said "Class A" pools 50% of the excess in each pool over and

above an average of 5 barrels per well per day and that this curtailment is necessary in order to avoid discrimination as between the said "Class A" pools themselves and [fol. 60] as between the said "Class A" pools and the other pools of the State and to prevent waste of crude oil in said "Class A" pools and to protect the coequal rights of the producers therein.

The Commission further finds from the evidence that the best manner of applying curtailment of said "Class A" pools, is as follows, to-wit: That in each of said "Class A" pools all leases therein where the per well average per day is five barrels or less should be exempted from curtailment or proration because to curtail or prorate said 5 barrel well or wells making less than 5 barrels would be to reduce the gross income therefrom below the cost of operation and thus compel their abandonment which would constitute a waste of an irreplaceable natural resources, and for the further reason that many of such wells produce water along with the oil and it is necessary to pump them each dau in order to prevent their injury by water encroachment. That in each of saic "Class A" pools each lease should receive said exemption up to an average of 5 barrels per well per day but in the case of those leases where the average per well exceeds 5 barrels per day, the excess should be curtailed 50% so that, for example, an 80 acre lease with 8 wells thereon which is making a total of 100 barrels per day should be curtailed and prorated so that it would receive an exemption of 40 barrels and the remaining 60 barrels of potential should be cut to 30 barrels, so that the total allowable production from such lease would be 70 barrels per day. In this manner the Commission estimates that the production from the hitherto unprorated fields will be decreased approximately 50,000 barrels per day and to the reasonable market demand therefrom and that this curtailment will fall approximately 10,000 wells out of a total of approximately 60,000 wells hitherto not prorated, and that of said 60,000 wells, the 50,000 smallest wells will remain uncurtailed under this plan and for the reasons above stated.

The Commission finds that the full potential production from the Oklahoma City pool cannot be produced without waste, including physical waste and waste incident to the

production of crude oil or petroleum in excess of the reasonable market demand, and that the reasonable market demand from said pool at the present time is approximately 131,095 barrels per day, and that in the month of November said reasonable market demand from said pool will be approximately 134,589 barrels per day, and that in the month of December the reasonable market demand from said pool will be 131,003 barrels per day, and that the market demand herein named is somewhat contingent upon transference by the purchasing companies of purchasing power from the "Class A" pools herein to the Oklahoma City pool and upon ability to transfer pipeline connections, and the Commission therefore finds that the orders, rules and regulations should be made sufficiently flexible so that increases or decreases in market demand from said Oklahoma City pool and increases or decreases in potential production therefrom, can be recognized by ancillary orders of the Commission, and that for this purpose the Umpire and Operators' Committee should be instructed to compute from time to time, the rate of curtailment necessary in order to conform the permitted production to the reasonable market demand from the said Oklahoma City pool and to report the same to the Commission with the facts in support thereof as a basis for such ancillary order; it being understood, however, that whatever reasonable market demand develops for crude oil from the Oklahoma City pool shall be prorated among all the producing wells therein, so that each well will be permitted to produce its proportionate share of the amount of oil that may be produced from said field without waste.

[fol. 61] (k) The Commission finds that the potential production of the State of Oklahoma now so far exceeds the reasonable market demand from said State as a whole, and the resulting curtailment of producing wells has become so drastic and severe, that it would be inequitable and unfair and discriminatory to hereafter permit full production from wild-cat wells hereafter drilled which open new pools, sands or zones, and the Commission therefore finds that all wild-cat wells or wells opening new pools, sands or zones completed or brought into production after the date of this order should be limited to a production of 50 barrels per well per day, after one day open flow for test, and until otherwise ordered by the Corporation Commission.

The Corporation Commission has examined many witnesses in this case, and has afforded an opportunity for everyone interested to be heard. There has been some contention that proration of the Oklahoma oil pools is a scheme or device to limit production and to maintain the price of crude oil, but this Commission asserts that its orders have been and are now based solely upon the purpose to prevent waste of crude oil in the various oil pools of the state, and, in the process of so doing, to require ratable or proportional taking from each of the wells in a common source of supply or pool where curtailment of production from the pool as a whole is necessary to prevent waste, and that this Commission has exercised its independent judgment in prescribing the proration orders, and has not attempted to influence price of crude oil or refined products, and that if any such effect has occurred it is purely incidental and not intended. In this connection the Commission finds that from 65% to 75% of the crude oil sold from the wells in Oklahoma is sold to refiners and purchasers who take it outside of the State of Oklahoma, and which oil so sold goes into the world market for petroleum in competition with crude oil from Venezuela, Mexico, Columbia, Peru, California, New Mexico, Kansas, Texas, Louisiana, Arkansas, and other producing areas, and that the price at which it is sold is fixed, not by this Commission, but by the free play of competition and by the relation between supply and demand in the said world market; that the market price for said oil is evidenced by the price regularly posted and offered by the principal purchasers of oil, and that practically all of the oil that is sold in Oklahoma is sold at said regular posted market price, and that there is no evidence that proration in Oklahoma has had any effect upon said price.

The Commission further finds that proration has been in effect in various oil pools in the State of Oklahoma almost continuously from October 1926, to the present time, and that during said period the regular posted market price for crude oil in this state has declined about 40% and has not been maintained or affected by proration in this state so far as this Commission is able to determine; that there is plenty of crude oil now available for purchase by refiners in the State of Oklahoma and the Commission has taken every precaution to make its orders so flexible that no rea-

sonable market demand for crude oil from any pool in the State shall be denied.

There was evidence adduced at the hearing tending to show that there is a difference of opinion among operators and experts as to whether time proration, as applied in the Oklahoma City field, or proration based upon a percentage of daily potential production, is the better method of secur- [fol. 62] ing proportional taking without injury to the wells. This Commission has provided in its orders a degree of flexibility by which either time proration or what is known as percentage proration might be utilized in each of the pools involved upon application of any operators, or upon application of the Umpire or Operators' Committee supported by proper evidence. The operators in the Oklahoma City pool have, up to this time, unanimously recommended to this Commission that proration in that pool be applied according to the time method, and it has been for this reason that time proration has been in effect in the Oklahoma City pool. The Commission cannot find from the evidence now before it that a change from time proration to percentage proration should be ordered, nor whether a combination of the two methods might be utilized with advantage in said pool. The Commission therefore sets this particular matter for hearing befor- this Commission at 10 o'clock A. M. on the 5th day of November, 1930, and will give all operators in the field an opportunity to be heard on the question whether such change should be made. In the meantime, and until otherwise ordered by the Commission, time proration will be continued in the Oklahoma City field.

The Commission finds from the evidence that crude oil and natural gas occur together, or in close proximity to each other in the ground, and that there is a common gas pressure throughout a common pool which exerts an energy or force to move the gas and oil towart the point of least resistance, and that therefore when wells are drilled into a pool or structure the oil and gas become migratory, and, having the power of self transmission, will move from one property to another, underground, in such pool; and that when some of the wells in such a common pool are permitted to produce at a greater proportion of their capacity than others, drainage occurs from the less active to the more active wells, if such disproportionate condition is continued,

that in the Oklahoma City pool there is a heavy gas pressure which would cause such drainage should disproportionate taking of crude oil and gas be permitted that the history of the oil producing business in this and other surrounding states shows that in the case of flush pools where proportional taking from the wells is not enforced, and where the full production from the pool cannot be taken, either because of inadequate transportation facilities or because the reasonable market demand does not equal the potential production, producers who do not have physical or market outlets will be forced to produce their well to capacity in order to prevent drainage of the oil to the wells of such producers as do have adequate physical or market outlets. In such cases, in the absence of adequate steel storage available to every producer, some of them will flow the oil into earthen pits. This has occurred many times in the oil pools in Oklahoma and surrounding states and has always caused actual physical waste of the crude oil through evaporation, leakage, and washouts to a very large extent. The Commission finds that this would be the case in the Oklahoma City field, and in many other fields of the state if production were not curtailed as provided in this order.

The Commission further finds that to permit the wells in the Oklahoma City field to flow wide open and continuously, without limitation as to time, would cause serious underground waste.

A protest has been filed by the producers and refiners in Stephens County against the application of this order to the wells in said county, and some evidence has been introduced tending to show that at least some of the wells in the pools in said county produce such large quantities of salt water that they might be injured by enforcement of the degree of curtailment provided for in the case of the "Class [fol. 63] A" pools. The Commission is unable to determine from the evidence now before it whether any or all of the pools and leases in Stephens County should be exempted from proration on account of possible injury to the wells, or on account of the state of the market demands in said county, and for these reasons the Commission will hold this order in abeyance as to the oil pools in Stephens County until a more particular examination of the wells and leases, and of the reasonable market demand for crude oil from said pools can be made under the supervision of this Com-

mission; and, to that end, the Umpire and the Chief Oil & Gas Conservation Officer, and the Operator's Committee, are hereby directed to make an immediate and detailed examination of the producing and operating conditions in said pools, and with respect to the market demand from the pools in said county, and to report the same to this Commission on or before 10 o'clock A. M., November 7th, 1930, at which time this Commission will hear the reports of the said Umpire, Agents and Operator's Committee, and any interested person with reference to the application of the order to said Stephens County pools, any modification thereof that should be made, or any exemption that should be granted.

The Corporation Commission further finds that the allegations of the supplemental petition filed herein are true and correct, and that accordingly these conditions of waste now exist in said pools, and commission of waste is imminent, and the same should be prohibited and prevented, and the following rules and regulations are necessary, reasonable and approprite for that purpose.

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

1

The areas to be subjected to the rules and regulations of the Corporation Commission are all of the oil pools in the State of Oklahoma, and such new pools, sands or zones as may come into production during October, November and December, 1930.

2

Ray M. Collins is hereby appointed as Umpire and Agent of the Commission to enforce the rules and regulations herein made and he is hereby authorized to employ as many assistants as he shall deem necessary.

3

Where percentage proration is applied a gauge of producing wells shall be taken in the following manner: the gauge to determine potential shall be taken by each operator in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken

between the hours of seven A. M. on the day set by the Order of the Commission, and seven A. M. on the following day. Prior to the taking of such gauge and in respect of each producing lease covered hereby the Umpire shall appont a representative of an operator owning a lease adjoining the particular property to be gauged, and shall notify the operator whose property is to be gauged of the name of the representative, such notification to be given prior to the taking of such gauge. It shall be the positive [fol. 64] duty of such representative to remain on the lease that is being gauged throughout the entire day that the gauge is being taken to witness the gauging of the production therefrom; and immediately upon the completion of such gauge, such witness and the operator whose property was gauged shall file a written statement with the Umpire showing the production of said lease, and of each well thereon for the day said gauge is taken. The production so shown shall constitute the potential for said lease until the next gauge is taken. During the time this Order is in force a similar gauge of each property shall be taken from time to time as the Umpire and Operators' Committee may designate but not less than onec each month, except that in the entire Greater Seminole area, aside from South Earlsboro, East Earlsboro, East Little River, Sasakwa, Konawa, West Asher-Wanette, Earlsboro Townsite and Wilcox wells in Allen pools, and in the "Class A" pools, the gauge may, upon direction of the Umpire, be determined by applying the proper decline curve for each lease so gauged.

Oklahoma oil production shall be limited to an average of approximately 550,000 barrels per day during October 1930; 545,000 barrels per day during November 1930, and 535,000 barrels per day during December 1930; said figures represent the estimated demand during said period and same shall be used as the basis for the limitation of production in this State until the Corporation Commission shall find from evidence that the same shall be changed.

Each person, firm or corporation having the right to drill into and produce oil from any of the flush or semi-flush pools or areas and extensions thereof that are covered by this Order may take from such pool or area and extension thereof only such proportion of all crude oil and pe-

troleum that may be produced therefrom under this Order as the production of the well or wells of such person, firm or corporation in said pool or area bears to the total potential production of such pool or area. In the case of each such pool or area the Umpire and the Operators' Committee for said pool or area shall recommend whether the production shall be curtailed on a time basis or on the basis of a percentage of potential daily production but such decision shall be reported by the Umpire to this Commission for approval and in no event shall any pool and its extensions be permitted to produce more than its allowable output as fixed by this Order.

The Commission may, by ancillary order, temporarily reduce the allowable percentage of production for any pool upon the recommendation of the Umpire and Operators' Committee that it is necessary to do so in order to allow producers who may be overproduced to catch up with their respective quotas.

5

Where shortage and overages have occur-ed under previous orders of this Commission, the same shall be carried forward and adjusted during the month of October. Any lease showing an overage of one barrel or more at November 1st, or at the first day of any month thereafter during the life of this Order shall be immediately reported by the Umpire under oath to the Corporation Commission as a basis for citation and such report shall contain in addition to the location of the property and the amount of the overage, the names and addresses of the lessee, the purchaser of the oil and the transporter. Leases which are being gauged according to a decline curve and showing a shortage at the end of any month of more than two days allowed production shall take as their potential for the following month the daily average production of the last ten days of the month. And in the case of such leases, shortages of two days allowable production or less shall be credited on the next month's allowed production. [fol. 65] To establish equality between producing wells and drilling wells, each well now drilling in any of said areas, or which may be commenced in said areas or in any new areas prior to December 31, 1930, shall take a delay

prior to being brought into production, equal to the accumulated shut-in time and accumulated equivalent time resulting from pinching of producing wells from the beginning of the proration period in each pool, said period of delay to be computed in each instance after allowing seven (7) days for the cement to set: Provided the maximum shut-in time in each of said pools shall be according to the following schedule:

Area	No. of days cement to set	No. of days of open flow for test	Days shutdown	Total
Oklahoma City	7	1	57	65
East Earlsboro	7	1	41	49
Konawa	7	1	16	24
West Asher-Wanette	7	1	16	24
Marshall-Lovell	7	1	16	24
South Earlsboro	7	1	16	24
Seminole, et al	7	1	16	24

Previous orders of the Corporation Commission as to wells now completed but not on production shall be continued in effect as to the shutdown requirements therein. Wildcat wells hereafter completed and opening new pools, sands, or zones shall have one day of open flow for test and thereafter the production therefrom, together with that from subsequently completed wells therein, shall be pinched in to 50 barrels per well per day until further order of the Corporation Commission. A wildcat well shall be considered as one outside of a per-existing drainage area.

7.

That all purchasers and pipeline carriers of oil in the State of Oklahoma be and they are hereby forbidden to aid or abet producers in violating this Order by purchasing or carrying oil produced in violation of these orders of the Commission.

8

Attention of the producers in each pool is hereby directed to Section 7959, Compiled Oklahoma Statutes, which provides that any person, firm or corporation may institute proceedings before the Corporation Commission or apply for a hearing upon any question relating to the enforcement of the conservation laws. In this connection, producers in each of the pools in Oklahoma are invited to appear before the Commission at any time that they may deem themselves pecul-arly injured by the administration.

of this order in any particular or in any manner discriminated against, and the Commission will hear and act upon the evidence disclosed in such hearing. Notice should be given to the Umpire and Operators' Committee of the intention to thus appear before the Commission on any such question.

9

Class A Pools: All oil pools in the State not heretofore prorated under the order of the Corporation Commission No. 5189, 5246 and 5292 shall be designated as "Class A" pools. All leases in said pools which have a potential production in excess of an average of 5 barrels per well per day shall be curtailed 50% of the excess over such 5 barrels per well per day average. In all leases in said pools [fol. 66] an exemption from proration of an average of 5 barrels per well per day shall be allowed. The following is an illustration of what is intended by this regulation, to-wit: an 80-acre lease with 8 wells thereon which is making a total of 100 barrels per day will be allowed an exemption of 40 barrels and the remaining 60 barrels will be cut to 30 barrels so that the total allowable production from the lease as a whole will be 70 barrels. The pipelines and purchasing companies are hereby directed to observe and enforce this regulation in said "Class A" pools and to assist the Umpire and Operators' Committee in carrying out the requirements hereof.

10

Class B Pools: The following semi-flush pools shall be placed in "Class B", to-wit: Allen (Wilcox), Allen (Cromwell), Bowlegs, Earlsboro, (proper), Earlsboro Townsite, Little River, East Little River, Marshall-Loyell, Maud, Mission, Sasakwa, Searight, Seminole, East Seminole and St. Louis.

These pools shall be curtailed in the following manner:

Allowed production 50% of potential production with this qualification—that in the case of any lease not capable of making in excess of 50 barrels per day, it shall be allowed an exemption of 5 barrels per well per day and the curtailment of 50% shall only be applied to the excess over an average per well of 5 barrels per day.

11

Class C Pools: The following pools shall be placed in "Class C", to-wit: Carr City pool with its new extension and South Earlsboro pool. These pools, to recognize the market outlet and to conform to the peculiar conditions therein shall be curtailed according to the following schedule:

Average barrels per well per lease:		
300 barrels or more, allowed production	25%	
200 to 300 barrels, " "	30%	not over 75 bb.
100 to 200 " " "	37½%	" " 60 "
Less than 100 bbls., " "	50%	

Also, in these pools where a lease is not capable of making more than 50 barrels per day, there shall be allowed an exemption of 5 barrels per well per day as in "Class B".

12

Class D Pools: Konawa Pool. There being no other pool in the State — similar position to that of Konawa, it is placed in a class by itself and shall be prorated on the following schedule:

Average barrels per well per lease:		
400 bbls. or more., allowed production	18¾%	
300 to 400 bbls., " "	22½%	not over 75 bbls.
200 to 300 " " "	26¼%	" " 67 "
100 to 200 " " "	37½%	" " 53 "
Less than 100 bbls.		

[fol. 67] Also, in this pool, leases not capable of making over 50 barrels per day shall be granted an exemption of 5 barrels per well per day as in "Class B".

Class E Pools: East Earlsboro and West Asher-Wanette. Owning to the changing relation between the potential production and the market outlet from these pools, it is ordered that each of them be limited in production to a stated figure representing the present market outlet which, in the case of the East Earlsboro pool, is 15,000 barrels per day, and in the case of the West Asher-Wanette pool is 7,200 barrels per day. And that the Umpire and Operators' Committee be required to ascertain and compute from time to time the percentage of potentual production which may be allowed to conform the permitted

poroduction to the market outlet and to report the same to the Corporation Commission as the basis for an ancillary order. But in these pools the 5 barrel per well exemption in leases not capable of makin- in excess of 50 barrels per day shall apply as in "Class B".

14

Class F Pools: Tatums and Chandler Pools. Both of these pools have new extension with potentially large wells along with old, small wells. Having in view the present market outlet from these pools, it is ordered that they be curtailed in the following manner:

Wells with a potential daily production of 400 barrels or more shall be allowed 100 barrels daily. Wells with a daily potential of from 100 barrels to 400 barrels shall be allowed 50 barrels per day. Wells with a daily potential production of less than 100 barrels shall be allowed an exemption of 5 barrels per day and be curtailed 50% of the excess over 5 barrels.

Provided: That the Umpire and Operators' Committee shall, from time to time, make a survey of the market outlet from each of said pools and in case the market demand increases, this fact, together with suggested changes in the percentage of allowable production, shall be reported to the Commission as the basis for an ancillary order.

15

Class G Pools: West Perry, Orlando and Township 20 North, Range 4 West. These new pools' unascertained possibilities are now being curtailed on the basis of the following maximum allowed output which shall be continued until otherwise ordered by the Commission, to-wit:

West Perry	600	barrels	daily
Orlando	400	"	"
Twp. 20 R. 4 W	400	"	"

16

Class H Pools: The Oklahoma City pool. The Corporation Commission allocates to the Oklahoma City pool an outlet of 131,095 barrels per day in October, 134,589 barrels per day in November and 131,003 barrels per day in

December. This nomination of the total permitted production of the pool shall serve as a basis for fixing the proportional production of the wells in said pool until the [fol. 68] Commission finds from evidence that a greater or less reasonable market demand obtains. The Umpire and Operators' Committee are directed to compute the percentage of proration from time to time as found necessary to conform the permitted production to the reasonable market demand and to report their findings to the Commission as a basis for an ancillary order.

It is further ordered that whatever reasonable market demand from the pool shall exist at any time shall be prorated and allocated among all the producing wells, so that each well shall receive its prorata share of the reasonable market demand, and the pipeline companies are hereby directed to cooperate with the Umpire in so arranging pipe line connections that there shall be no discrimination in favor of one producer and against another.

17

The Commission will, in separate order, name for the various pools embraced within the terms and provisions of this Order, Operators' Committees for each of said respective pools and territories embraced herein. This will be necessary for the reason that the law required the approval of His Excellency, the Governor of the State of Oklahoma, in the appointment and designation of such officials.

Jurisdiction of this cause is hereby retained by the Corporation Commission, and notice is hereby given that supplemental and ancillary orders may be made herein from time to time as required by new developments and as instructions to the Umpire and Operators' Committee. When in the judgment of the Umpire or any Operators' Committee any adjustment or fixing of percentages of well production as provided in this order shall be proper, or as any such supplemental or ancillary order shall become necessary, the facts supporting the necessity therefor and the reasonableness thereof shall be reported to the Commission for approval, and no exception to those rules and regulations shall be allowed by the Umpire or Operators' Committee, nor shall any adjustment of percentages or

well production become effective, unless approved by such an ancillary order of this Commission. Should the demand for crude oil from the State of Oklahoma increase prior to December 31, 1930, to such an extent as to permit a greater outlet from the pools herein mentioned, the Umpire shall report the facts to the Commission, together with the recommended percentages, and the Corporation Commission hereby gives notice that such revised percentages may be substituted for the percentages provided for in this order.

Done at Oklahoma City this the 28th day of October, 1930.

Corporation Commission of Oklahoma. (Signed) C. C. Childers, Chairman. (Signed) Fred Capshaw, Commissioner. (Signed) E. R. Hughes, Commissioner.

Attest: (Signed) E. D. Hicks, Jr., Secy. (Seal.)

[File endorsement omitted.]

[fol. 69] IN UNITED STATES DISTRICT COURT

AMENDMENT TO SECOND AMENDED AND SUPPLEMENTAL BILL—Filed Jan. 2, 1931

Comes now plaintiff and by leave of Court first had herewith amends its Second Amended and Supplemental Bill so as to further allege that the defendants did on December 30, 1930, make and enter an order extending and modifying order No. 5369 to and including March 31, 1931 and reserving therein jurisdiction to make other and further orders in said cause before said Corporation Commission, and said defendants also made on December 30, 1930, a supplemental separate order pertaining to the Oklahoma City field, copies of both of which orders are hereto attached as Exhibits X and Y and Z and plaintiff further amends its said Second Amended and Supplemental Bill so as to make all the allegations therein leveled against the validity of the Corporation Commission's orders also allegations against the validity and constitutionality of the orders shown by Ex-

hibits X and Y and Z hereto attached and plaintiff alleges that the orders shown by Exhibits X and Y hereto are void and invalid for the same reasons set forth in its Second Amended and Supplemental Bill as reasons for the invalidity of the former orders of the Commission.

George S. Ramsey, Edgar A. de Meules, Horace G. McKeever, A. K. Swann, Attorneys for Champlin Refining Company.

[fol. 70] EXHIBIT "X"

Certificate

STATE OF OKLAHOMA,
Oklahoma County, ss:

To all to whom these presents shall come, Greetings:

I, E. D. Hicks, Jr., Secretary of the Corporation Commission of Oklahoma, do hereby certify that the following hereto attached is a true and correct copy of order on file in this office of the Corporation Commission of Oklahoma, covering Order No. 5413 under Cause No. 10326, the original of which is now on file and matter of record of this office.

In testimony whereof I hereunto set my hand and affix the seal of the Corporation Commission of Oklahoma.

Done in Oklahoma City this the 1st day of January, 1931.

E. D. Hicks, Jr., Secretary Corporation Commission of Oklahoma. (Seal.)

[fol. 71] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326. Order No. 5413

In the Matter of the Application of WIRT FRANKLIN for Rules and Regulations to be Established by the Commission to Prevent Waste of Petroleum in the Producing Oil Fields of the State of Oklahoma

Order Extending and Modifying Order No. 5369

Comes now petitioner herein and various and sundry producers of oil in the State of Oklahoma, and this matter

having been set for hearing on this 29th day of December, 1930, and the Commission having heard and considered the evidence of the petitioner and sundry other persons, and the evidence of any and all persons opposing the supplemental petition herein, and the Commission having made an investigation of the facts alleged and of the conditions in the oil fields of Oklahoma, and being fully advised in the premises, finds as follows:

(a) That areas to be covered by the rules and regulations herein prayed for are all of the oil producing areas in the State of Oklahoma and those new sands or areas which may be brought into production during the months of January, February and March, 1931.

(b) That notice by publication on all persons or classes interested in this proceeding and in the rules and regulations to be established hereby has been given, as required by law, in a newspaper of general circulation in this State, and that, in addition, reasonable notice in writing has been served personally on all persons, firms and corporations known to petitioner to be interested in this proceeding and due proof of service of notice has been made and filed herein.

(c) The Corporation Commission finds from the evidence that there is an overproduction of crude oil in the State of Oklaho- attended by waste of gas and of gas pressure and that the producers of crude oil in the oil pools of Oklahoma are threatening to and will, unless restrained by the rules and regulations of the Corporation Commission, commit physical waste of crude oil, economic wast- underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands, and [fol. 72] that the commission of such waste is so imminent in each of the areas involved in this proceeding that orders, rules and regulations of this Commission are necessary in order to prevent such waste.

The Commission further finds that there is a general overproduction and importation of crude and refined petroleum in the United States, and that this fact tends to reduce the amount of crude oil that can be produced in the State of Oklahoma without waste; that the potential production of crude oil in the United States is at this time ap-

proximately 10,000,000 barrels per day, and imports of crude and refined petroleum aggregate about 300,000 barrels per day, thus creating a total possible current supply of 10,300,000 barrels per day as against an approximate daily demand for domestic use and export of 2,500,000 barrels per day. That by reason of this great oversupply and threatened waste, potential production is now being curtailed in Oklahoma and other producing regions, and unless there is a continuance of curtailment of production in the areas involved herein, there will be an increase in waste in this State and an undue exhaustion of our oil resources. The Commission finds that this petroleum situation constitutes a grave state emergency and that the laws of the State of Oklahoma and the powers of the Corporation Commission should be availed of to remove the same.

(d) The Commission further finds from the evidence that, in addition to the excess of potential and actual production and imports over current demand, there are stocks of petroleum on hand in the United States aggregating more than 670,000,000 barrels, which stocks are excessive and beyond the needs of the petroleum industry. That by reason of the excessive supply thus indicated, the purchasers of crude oil in Oklahoma are unwilling to purchase crude oil in Oklahoma for storage purposes in any amount that would be adequate to take care of the surplus of potential production over current demand and that, therefore, there is not sufficient empty tankage available to take care of said excess and unless production in Oklahoma is curtailed, much oil would necessarily go to earthen storage where it would evaporate and escape and thus be wasted.

(e) The Commission finds from the evidence that in order to curtail the production of crude oil in Oklahoma in a manner to prevent the commission of waste and to protect the coequal rights of producers in each pool, it will be ne-[Vol. 73] cessary to enforce proportionality of taking from the wells and leases in each of the pools where the potential production thereof exceeds the reasonable market demand therefrom, and that unless such proportionality is required, injustice would be done as between producers in the same pool in that drainage would occur from the less active leases or wells to the more active leases or wells, and an

undue proportion of the gas pressure would be utilized by some operators to the detriment of others and unfair discrimination would arise as between pools.

(f) The Commission further finds that the rated potential daily production of crude oil from the wells in Oklahoma during the month of January, 1931, is and will be approximately 6,252,219 barels and that during the months of February and March, 1931, the said rated potential daily production will be 6,686,564 barrels and 7,263,077 barrels respectively, and that the daily demand for crude oil from Oklahoma during the months of January, February and March, 1931, will range between 465,000 barrels per day in January, which the Commission estimates as the probably demand, and 506,095 bbls. per day, which is the maximum potential demand, as hereinafter explained, and that in the month of February the estimated probable demand is 469,000 bbls. per day, with a maximum potential demand of 506,550 bbls. per day, and in March the probable demand will be 470,000 bbls. per day, with a maximum potential demand of 500,010 bbls. per day. Said distinction between probable demand and maximum potential demand arises from the uncertainty of the market outlet from what is known as the "Class A" pools, as described in the Order of October 28, 1930. The Prairie Oil & Gas Co., having announced that it would withdraw as a purchaser of oil on Jan. 1, 1931, if said withdrawal is carried out it would leave the demand from the "Class A" pools at 175,905 bbls. per day, approximately, but if said "Class A" pools could reestablish their market it would potentially be approximately 217,000 bbls. per day in the month of January, and this same relative difference between the demand as now appears probable and that which might possibly be established would account for the difference in the total statewide demand as above referred to. That therefore, and by reason of the facts found in this order, the potential production from each of the pools and classes of pools involved in this proceeding is so far in excess of the reasonable market demand that the full potential production cannot be produced without waste.

The Commission further finds that if no restraint were placed upon producing wells or wells now completed or upon wells hereafter drilled during the months of January, February and March 1931, the potential production of the

State of Oklahoma would be much greater than that above stated and would exceed all transportation and marketing facilities and reasonable market demands to such an extent as to force large quantities of oil into earthen storage in this State and, otherwise cause waste of a character prohibited by the laws of the State of Oklahoma. In order to prevent such waste, the Commission finds that it is neces- [fol. 74] sary to curtail the production from the pools in this State and each of them during the said months of January, February and March, 1931, and according to the subjoined schedules showing the classes of pools to be prorated, the potential production of each, the estimated daily production of each under proration and the resulting total production, under proration, for the said three (3) months period:

	Estimated potential	Maximum potential demand	Estimated probable demand
January:			
Class A	247,000	217,000	175,905
Oklahoma City	5,388,298	85,000	85,000
Outside	616,921	204,095	204,095
Total State	6,252,219	506,095	465,000
February:			
Class A	243,295	213,615	176,175
Oklahoma City	5,838,804	90,000	90,000
Outside	604,465	202,825	202,825
Total State	6,686,564	506,440	469,000
March:			
Class A	239,646	210,646	180,636
Oklahoma City	6,411,459	90,000	90,000
Outside	611,972	199,364	199,364
Total State	7,263,077	500,010	470,000

[fol. 75] Suggested Potential and Allowed Production of Crude Oil, State of Oklahoma
Proration Schedule—January 1, 1931, to March 31, 1931
(Except Class A and Class H Pools)

	January		February		March	
Class B:	Estimated potential	Estimated production	Estimated potential	Estimated production	Estimated potential	Estimated production
Allen (Wilcox)	6,704	3,352	6,369	3,185	6,051	3,026
Allen (Cromwell)	16,534	8,267	16,038	8,019	15,557	7,779
Bowlegs	25,399	12,700	24,637	12,319	23,898	11,949
Earlsboro (proper)	26,239	13,120	25,452	12,726	24,688	12,344
Earlsboro (Townsite)	9,475	4,738	9,001	4,501	8,551	4,276
Little River	45,841	22,921	45,466	22,733	44,102	22,051
East Little River	21,265	10,633	20,202	10,101	19,192	9,596
Marshall-Lovell	3,658	1,829	3,548	1,774	3,442	1,721
Maud	5,316	2,658	5,157	2,579	5,002	2,501
Mission	12,664	6,332	12,284	6,142	11,915	5,958
Sasakwa	8,169	4,085	7,761	3,881	7,373	3,687
Searight	11,156	5,578	10,821	5,411	10,496	5,248
Seminole	25,816	12,908	25,042	12,521	24,291	12,146
East Seminole	3,651	1,826	3,541	1,771	3,435	1,718
St. Louis	36,294	18,147	35,705	17,853	34,634	17,317
Subtotal	258,181	129,094	251,024	125,516	242,627	121,317
Class C:						
Carr City	42,014	12,184	40,035	11,642	44,163	12,625
South Earlsboro	28,175	7,044	25,358	6,340	22,822	5,706
Subtotal	70,189	19,228	65,393	17,982	66,985	18,331

Class D:						
Konawa	67,590	12,673	65,211	12,227	61,950	11,616
Class E:						
East Earlsboro	36,466	15,000	34,643	15,000	32,911	15,000
West Asher-Wanette	53,777	7,200	58,588	7,200	61,659	7,200
West Seminole	11,373	3,000	10,236	3,000	10,236	3,000
Wewoka	40,000	4,000	40,000	4,000	60,000	4,000
Subtotal	141,616	29,200	143,467	29,200	164,806	29,200
Class F:						
Tatums	37,000	4,500	35,000	4,500	32,000	4,500
Chandler	25,600	2,500	24,320	2,500	23,104	2,500
Subtotal	62,600	7,000	59,320	7,000	55,104	7,000
Class G:						
West Perry	1,675	600	1,500	600	1,400	600
Orlando	3,671	400	3,300	400	3,000	400
Twp. 20 N., R. 4 W.	1,400	400	1,250	400	1,100	400
Subtotal	6,746	1,400	6,050	1,400	5,500	1,400
Wildcat Wells:						
New Wells (outside of Okla. City)	5,000	500	5,000	500	5,000	500
Free production for testing	3,000	3,000	5,000	5,000	5,000	5,000
Unprorated small wells in prorated areas	2,000	2,000	4,000	4,000	5,000	5,000
Total	616,921	204,095	604,465	202,825	611,972	199,364

[fol. 76] (g) The Commission finds that the order numbered 5369 and the rules and regulations adopted October 28, 1930, should be continued in force for the first quarter of 1931 as modified by this order and by such supplemental or ancillary orders as may be made by the Commission from time to time. In this connection, the Commission finds that it is characteristic of the oil producing business that the reasonable market demand and the potential production of oil pools sometimes change abruptly and frequently and it is therefore necessary that the order, rules and regulations be made sufficiently flexible to permit prompt readjustments of allowable percentages of production in order to conform the permitted production to the reasonable market demand. For these reasons the Commission would request everyone interested and instruct the umpire and operators' committees to promptly advise this Commission of such changes in order that proper ancillary or supplemental orders may be made. The purpose of the Commission is to recognize fully the reasonable market demand for each pool and not to curtail production below such demand where the transportation or marketing facilities are adequate but to allocate such market demand ratably among the producting leases therein in proportion to the potential production of each lease to the end that the co-equal rights of the producers may be protected and the waste incident to the production of oil in excess of the transportation or marketing facilities or the reasonable market demand may be prevented.

(h) The Commission finds from the evidence that the curtailment and the varying percentages as between pools prescribed in the schedules contained in paragraph (f) herein are necessary and reasonable in order to reduce production in this State to the reasonable market demand and in a manner least injurious to the producers and royalty owners as a whole, and in order to prevent unfair and unreasonable discrimination in favor of any one pool or common source of supply as against another.

The Commission finds that the varying percentages of curtailment as between pools as set forth in paragraph (f) of this order are necessary, fair and reasonable because of the peculiar conditions in each case and in this, to-wit: that said pools are not all served in common by the same pipe-

lines and purchasers; that the reasonable market demand from certain of them is greater in proportion to potential production than in the case of others; that some of them are older than others and have been prorated longer than others, under orders of the Corporation Commission with a consequent greater reduction in potential flow and smaller possible production per well per day and are, therefore, accorded a higher percentage allowable production; that in many cases individual pools are served by local purchasers [fol. 77] whose facilities cannot be extended to the others, and in certain of the pools the sand and water conditions prevent as great curtailment as is possible in others, and that in certain pools there is a more intensive drilling campaign and wells of larger capacity than in others. The Commission also finds that in the making of said schedule in paragraph (f) the producers and purchasers in all of said pools were consulted and meetings of said producers and purchasers were held at which all of the foregoing factors were considered and that said schedule represents the consensus of opinion of said producers and purchasers as to reasonableness of arrangement, necessity and convenience of producers and purchasers and equity as between the various common sources of supply under present circumstances.

The Commission finds that the basis of classification of pools for the application of the varying percentages of curtailment as shown by the schedule in paragraph (f) herein is the existing relation between the potential production of each pool and the amount of crude oil which can be produced from said pool without waste. That because said relation is not the same in all the pools involved, the percentages of curtailment must necessarily vary as between pools. A uniform percentage applied to all pools would result in the permitted production from some of them being less than the reasonable market demand therefrom, while in others the permitted production resulting from such uniform percentage would exceed the amount which could be produced therefrom without waste.

(i) The Corporation Commission further finds that in addition to the prevention of waste of crude oil, the establishment of the curtailment plan in this order set forth will tend to conserve natural gas and gas pressure in the pools to which it shall be applied.

(j) The Commission further finds from the evidence that the best manner of applying curtailment of said "Class A" pools, is as follows, to-wit: That in each of said "Class A" pools all leases therein where the per well average per day is ten barrels or less should be exempted from curtailment or proration because to curtail or prorate said ten barrel well or wells making less than ten barrels would be to reduce the output therefrom in many cases below the point of practical operation and thus compel their abandonment which would constitute a waste of an irreplaceable natural resource, and for the further reason that many of such wells produce water along with the oil and it is necessary to pump them each day in order to prevent their injury by water encroachment. That in each of said "Class A" pools each lease should receive said exemption up to an average of ten barrels per well per day but in the case of those leases where the average per well exceeds ten barrels per [fol. 78] day, the excess should be curtailed 50% so that, for example, an 80 acre lease with 8 wells thereon which is making a total of 100 barrels per day should be curtained and prorated so that it would receive an exemption of 80 barrels and the remaining 20 barrels of potential should be cut to 10 barrels, so that the total allowable production from such lease would be 90 barrels per day. In this manner the Commission estimates that the production from the "Class A" pools will be curtailed to the reasonable market demand therefrom.

(k) The Commission finds that the full potential production from the Oklahoma City pool cannot be produced without waste, including physical waste and waste incident to the production of crude oil or petroleum in excess of the reasonable market demand, and that the reasonable market demand from said pool at the present time, and during January, 1931, is and will be approximately 85,000 barrels per day, and that in the month of February, 1931, said reasonable market demand from said pool will be approximately 90,000 barrels per day, and that in the month of March, 1931, the reasonable market demand from said pool will be 90,000 barrels per day, and that the market demand herein named is subject to increase and the Commission therefore finds that the orders, rules and regulations should be made sufficiently flexible so that increases or decreases in market

demand from said Oklahoma City pool and increases or decreases in potential production therefrom, can be recognized by ancillary orders of the Commission, and that for this purpose the Umpire and Operators Committee should be instructed to compute from time to time, the rate of curtailment necessary in order to conform the permitted production to the reasonable market demand from the said Oklahoma City pool and to report the same to the Commission with the facts in support thereof as a basis for such ancillary order; it being understood, however, that whatever reasonable market demand develops for crude oil from the Oklahoma City pool shall be prorated among all the producing wells therein, so that each well or lease will be permitted to produce its proportionate share of the amount of oil that may be produced from said field without waste.

The Commission further finds that if an increased reasonable market demand should be asserted the permitted production from the Oklahoma City pool could be increased in a substantial and corresponding amount without discrimination as against other pools.

The Commission finds from the evidence that crude oil and natural gas occur together, or in close proximity to each other in the ground, and that there is a common gas pressure throughout a common pool which exerts an [fol. 79] energy or force to move the gas and oil toward the point of least resistance, and that therefore when wells are drilled into a pool or structure the oil and gas become migratory, and, having the power of self transmission, will move from one property to another, underground, in such pool; and that when some of the wells in such a common pool are permitted to produce at a greater proportion of their capacity than others, drainage occurs from the less active to the more active wells, if such disproportionate condition is continued; that in the Oklahoma City pool there is a heavy gas pressure which would cause such drainage should disproportionate taking of crude oil and gas be permitted; that the history of the oil producing business in this and other surrounding states shows that in the case of flush pools where proportional taking from the wells is not enforced, and where the full production from the pool cannot be taken, either because of inadequate transportation facilities or because the reasonable market demand does not equal the potential production, producers who

do not have physical or market outlets will be forced to produce their well to capacity in order to prevent drainage of the oil to the wells of such producers as do have adequate physical or market outlets. In such cases, in the absence of adequate steel storage available to every producer, some of them will flow the oil into earthen pits. This has occurred many times in the oil pools in Oklahoma and surrounding states and has always caused actual physical waste of the crude oil through evaporation, leakage, and washouts to a very large extent. The Commission finds that this would be the case in the Oklahoma City field, and in many other fields of the state if production were not curtailed as provided in this order.

The Commission further finds that to permit the wells in the Oklahoma City field to flow wide open and continuously, or disproportionately and without limitation as to time, would cause serious underground waste.

The Oklahoma City operators have petitioned this Commission for permission to change the method of proration in said pool from the time basis to the basis of percentage of daily potential production and this Commission's rules and regulations with reference thereto are embodied in a separate supplemental order this day issued. Proration of the Oklahoma City pool has heretofore been on the time basis because the operators requested it and because there was no practicable way of taking accurate gauges as a basis for proration by the percentage of potential method, there being no facilities for handling the oil that would be produced while the gauge was being taken. But the Commission now finds that a reasonably accurate gauge of potential production may now be taken and that under the circumstances as they now exist percentage proration would be better for the field in regard to reducing the possibility of waste and more equitable as between producers.

[fol. 80] (1) The Commission finds that the potential production of the State of Oklahoma now so far exceeds the reasonable market demand from said State as a whole, and the resulting curtailment of producing wells has become so drastic and severe, that it would be inequitable and unfair and discriminatory to hereafter permit full production from wild-cat wells hereafter drilled which open new pools, sands or zones, and the Commission therefore finds that all wild-cat wells or wells opening new pools, sands or zones

completed or brought into production after the date of this order should be limited to a production of 50 barrels per well per day, after one day open flow for test, and until otherwise ordered by the Corporation Commission.

The Corporation Commission further finds that the allegations of the supplemental petition filed herein are true and correct, and that accordingly these conditions of waste now exist in said pools, and commission of waste is imminent, and the same should be prohibited and prevented, and the following rules and regulations are necessary, reasonable and appropriate for that purpose.

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

1

The areas to be subjected to the rules and regulations of the Corporation Commission are all of the oil pools in the State of Oklahoma, and such new pools, sands or zones as may come into production during January, February and March, 1931.

2

Ray M. Collins is hereby appointed as Umpire and Agent of the Commission to enforce the rules and regulations herein made and he is hereby authorized to employ as many assistants as he shall deem necessary.

3

Where percentage proration is applied a gauge of producing wells shall be taken in the following manner: the gauge to determine potential shall be taken by each operator in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken between the hours of seven A. M. on the day set by the Order of the Commission, and seven A. M. on the following day. Prior to the taking of such gauge and in respect of each producing lease covered hereby the Umpire shall appoint a representative of an operator owning a lease adjoining the particular property to be gauged, and shall notify the operator whose property is to be gauged of the name of the representative, such notification to be given prior to the taking of such gauge. It shall be the positive duty of such

representative to remain on the lease that is being gauged throughout the entire day that the gauge is being taken to witness the gauging of the production therefrom; and immediately upon the completion of such gauge, such witness and the operator whose property was gauged shall file a written statement with the Umpire showing the production of said lease, and of each well thereon for the day said gauge is taken. The production so shown shall constitute the potential for said lease until the next gauge is taken. During the time this Order is in force a similar gauge of each property shall be taken from time to time as the Umpire and Operators' Committee may designate but not less than once each month. Such open gauges shall be taken in the following pools: Wewoka (Section 30 and Townsite), East Earlsboro, South Earlsboro, Section 29-9-6 (West Seminole), the flush wells in the Carr City pool located in Sections 2 and 3, Twp. 8, Range 5, and the flush wells in the Tatums pool.

On the ba-is of open gauges heretofore taken in East Little River, Konawa, West Asher-Wanette, Earlsboro Townsite and Sasakwa, the potential production shall be [fol. 81] declined 5% per month until further order of the Commission. On the basis of gauges already taken of the Wilcox sand wells of the Allen Pool, the potential shall be declined 3% each month, with the exception of the Sinclair-Cully 'A' Lease, Blackwell Fleet lease and the Texas-Lewis lease, which shall be declined 5% per month, and the Texas-Dinah lease, which shall be declined 10% per month; all other wells in the pools of the Greater Seminole Area shall be declined 3% a month.

4

Each person, firm or corporation having the right to drill into and produce oil from any of the flush or semi-flush pools or areas and extensions thereof that are covered by this Order may take from such pool or area and extension thereof only such proportion of all crude oil and petroleum that may be produced therefrom under this Order as the production of the well or wells of such person, firm or corporation in said pool or area bears to the total potential production of such pool or area. In the case of each such pool or area the Umpire and the Operators' Committee for said pool or area shall report from time to time any

changes in potential production or reasonable market demand so that this Commission may change the percentage allowable to equal the reasonable market demand.

5

Where shortages and overages have occurred under previous orders of this Commission, the same shall be carried forward and adjusted during the month of January 1931. Any lease showing an overage of one barrel or more at February 1, 1931, or at the first day of any month thereafter during the life of this Order shall be immediately reported by the Umpire under oath to the Corporation Commission as a basis for citation and such report shall contain in addition to the location of the property and the amount of the overage, the names and addresses of the lessee, the purchaser of the oil and the transporter. Leases which are being gauged according to a decline curve and showing a shortage at the end of any month of more than two days allowed production shall take as their potential for the following month the daily average production of the last ten days of the month. And in the case of such leases, shortages of two days allowable production or less shall be credited on the next month's allowed production.

6

To establish equality between producing wells and drilling wells, each well now drilling in any of said areas, or which may be commenced in said areas or in any new areas prior to March 31, 1931, shall take a delay prior to being brought into production, equal to the accumulated shut-in time and accumulated equivalent time resulting from pinching of producing wells from the beginning of the proration period in each pool, said period of delay to be computed in each instance after allowing seven (7) days for the cement to set: Provided the maximum shut-in time in each of said pools shall be according to the following schedule:

Area	No of days cement to set	No. of days of open flow for test	Days shutdown
Oklahoma City	7	8 hours	57
East Earlsboro	7	1 day	41
Konawa	7	1 day	16
West Asher-Wanette	7	1 day	16
Marshall-Lovell	7	1 day	16
South Earlsboro	7	1 day	16
Seminole, et al	7	1 day	16

Previous orders of the Corporation Commission as to wells now completed but not on production shall be continued in effect as to the shutdown requirements therein. Wildcat wells hereafter completed and opening new pools, sands, or zones shall have one day of open flow for test and thereafter the production therefrom, together with that from subsequently completed wells therein, shall be pinched in to 50 barrels per well per day until further order of the Corporation Commission. A wildcat well shall be considered as one outside of a pre-existing drainage area.

7

That all purchasers and pipeline carriers of oil in the State of Oklahoma be and they are hereby forbidden to aid or abet producers in violating this Order.

[fol. 82]

8

Attention of the producers in each pool is hereby directed to Section 7959, Compiled Oklahoma Statutes, which provides that any person, firm or corporation may institute proceedings before the Corporation Commission or apply for a hearing upon any question relating to the enforcement of the conservation laws. In this connection, producers in each of the pools in Oklahoma are invited to appear before the Commission at any time that they may deem themselves peculiarly injured by the administration of this order in any particular or in any manner discriminated against, and the Commission will hear and act upon the evidence disclosed in such hearing. Notice should be given to the Umpire and Operators' Committee of the intention to thus appear before the Commission on any such question.

9

Class A Pools: All oil pools in the State designated as "Class A" pools shall be prorated in the following manner. All leases in said pools which have a potential production in excess of an average of 10 barrels per well per day shall be curtailed 50% of the excess over such 10 barrels per well per day average. In all leases in said pools an exemption from proration of an average up to 10 barrels per well per day shall be allowed. The following is an illustration of what is intended by this regulation, to-wit: an 80-acre lease

with 8 wells thereon which is making a total of 100 barrels per day will be allowed an exemption of 80 barrels and the remaining 20 barrels will be cut to 10 barrels so that the total allowable production from the lease as a whole will be 90 barrels. The pipelines and purchasing companies are hereby directed to observe and enforce this regulation in said "Class A" pools and to assist the Umpire and Operators' Committee in carrying out the requirements hereof.

10

Class B pools: The following semi-flush pools shall be placed in "Class B", to-wit: Allen (Wilcox), Allen (Cromwell), Bowlegs, Earlsboro (proper), Earlsboro Townsite, Little River, East Little River, Marshall-Lovell, Maud, Mission, Sasakwa, Searight, Seminole, East Seminole and St. Louis.

These pools shall be curtailed in the following manner:

Allowed production, 50% of potential production with this qualification—that in the case of any lease not capable of making in excess of 50 barrels per day, it shall be allowed an exemption of 10 barrels per well per day and the curtailment of 50% shall only be applied to the excess over an average per well of 10 barrels per day.

11

Class C Pools: The following pools shall be placed in "Class C", to-wit: Carr City pool with its new extension and South Earlsboro pool. These pools, to recognize the market outlet and to conform to the peculiar conditions therein shall be curtailed according to the following schedule:

Average Barrels per Well per Lease			
300 barrels or more,	allowed production	25%	
200 to 300 barrels,	" "	30%,	not over 75 bbls.
100 to 200 barrels,	" "	37½%,	not over 60 bbls.
Less than 100 bbls.,	" "	50%	

Also, in these pools where a lease is not capable of making more than 50 barrels per day, there shall be allowed an exemption of 10 barrels per well per day as in "Class B".

12

Class D Pools: Konawa Pool. There being no other pool in the State in similar position to that of Konawa, it is

placed in a class by itself and shall be prorated on the following schedule:

Average Barrels per Well per Lease			
400 barrels or more,	allowed production	18¾%	
300 to 400 barrels,	" "	22½%,	not over 75 bbls.
200 to 300 barrels,	" "	26¼%,	not over 67 bbls.
100 to 200 barrels,	" "	37½%,	not over 53 bbls.
Less than 100 barrels,	"	50%	

[fol. 83] Also, in this pool, leases not capable of making over 50 barrels per day shall be granted an exemption of 10 barrels per well per day as in "Class B".

13

Class E Pools: East Earlsboro, West Asher-Wanette, West Seminole (29-9-6), and Wewoka (Section 30 and Townsite). Owing to the changing relation between the potential production and the market outlet from these pools, it is ordered that each of them be limited in production to a stated figure representing the present market outlet which, in the case of the East Earlsboro pool, is 15,000 barrels per day, and in the case of the West Asher-Wanette pool is 7,200 barrels per day, and in the case of the West Seminole (20-9-6) pool is 3,000 barrels per day, and in the case of the Wewoka (Section 30 and Townsite) pool is 4,000 barrels per day. And that the Umpire and Operators' Committee be required to ascertain and compute from time to time the percentage of potential production which may be allowed to conform the permitted production to the market outlet and to report the same to the Corporation Commission as the basis for an ancillary order. But in these pools the 10 barrel per well exemption in leases not capable of making in excess of 50 barrels per day shall apply as in "Class B".

14.

Class F Pools: Tatums and Chandler Pools. Both of these pools have new extensions with potentially large wells along with old, small wells. Having in view the present market outlet from these pools, it is ordered that they be curtailed in the following manner:

Wells with a potential daily production of 400 barrels or more shall be allowed 100 barrels daily. Wells with a daily potential of from 100 barrels to 400 barrels shall be allowed

50 barrels per day. Wells with a daily potential production of less than 100 barrels shall be allowed an exemption of 10 barrels per day and be curtailed 50% of the excess over 10 barrels.

Provided: That the Umpire and Operators' Committee shall, from time to time, make a survey of the market outlet from each of said pools and in case the market demand increases, this fact, together with suggested changes in the percentage of allowable production, shall be reported to the Commission as the basis for an ancillary order.

15

Class G Pools: West Perry, Orlando and Township 20 North, Range 4 West. These new pools of unascertained possibilities are now being curtailed on the basis of the following maximum allowed output which shall be continued until otherwise ordered by the Commission, to-wit:

West Perry	600	barrels daily
Orlando	400	" "
Twp. 20 R. 4W	400	" "

16

Class H Pools: The Oklahoma City pool. The Corporation Commission temporarily nominates for the Oklahoma City pool an outlet of 85,000 barrels per day in January, 1931, 90,000 barrels per day in February and 90,000 barrels per day in March. This nomination of the total permitted production of the pool shall serve as a basis for fixing the proportional production of the wells in said pool until the Commission finds from evidence that a greater or less reasonable market demand obtains. On the basis of the potential production of the field now reported to the Commission of 5,388,298 barrels per day, the temporarily nominated outlet of 85,000 barrels per day will require a proportional taking of 1½% from the potential production of each well or lease. This percentage shall be put in effect at 7 A. M. January 3, 1931, but the Umpire and Operators' Committee are directed to immediately begin the taking of gauges in said field according to the supplemental order this day issued and to compute the percentage of allowable from time to time as found necessary to conform the permitted production to the reasonable market demand, and to

report as soon as possible their findings to the Commission as a basis for an ancillary order revising such permitted percentage. Any person interested in said pool may also report to the Commission any evidence of the need for a changed percentage. All orders heretofore issued applicable to the Oklahoma City pool, and now in force and effect, are hereby extended in full force and effect until 7:00 [fol. 84] A. M. January 3, 1931. From and after said date and hour the percentage of allowable production herein fixed for the Oklahoma City pool shall be applied according to and as modified by Order No. 5413 this day issued which applies to the Oklahoma City pool alone.

It is further ordered that whatever reasonable market demand from the pool shall exist at any time shall be prorated and allocated among all the producing wells and leases, so that each well or lease shall receive its prorata share of the reasonable market demand, and the pipeline companies are hereby directed to cooperate with the Umpire in so arranging pipeline connections that there shall be no discrimination in favor of one producer and against another.

17

The Commission will, in separate order, name for the various pools embraced within the terms and provisions of this Order, Operators' Committees for each of said respective pools and territories embraced herein. This will be necessary for the reason that the law requires the approval of His Excellency, the Governor of the State of Oklahoma, in the appointment and designation of such officials.

The Order #5369 of October 28, 1930, shall be continued in force for the period January 1, 1931, to and including March 31, 1931, except as modified by this and other supplemental and ancillary orders of the Commission. Jurisdiction of this cause is hereby retained by the Corporation Commission, and notice is hereby given that supplemental and ancillary orders may be made herein from time to time as required by new developments and as instructions to the Umpire and Operators' Committee. When in the judgment of the Umpire or any Operators' Committee any adjustment or fixing of percentages of well production as provided in this order shall be proper, or as any such sup-

plemental or ancillary order shall become necessary, the facts supporting the necessity therefor and the reasonableness thereof shall be reported to the Commission for approval, and no exception to those rules and regulations shall be allowed by the Umpire or Operators' Committee, nor shall any adjustment of percentages or well production become effective, unless approved by such an ancillary order of this Commission. Should the demand for crude oil from the State of Oklahoma increase prior to March 31, 1931, to such an extent as to permit a greater outlet from the pools herein mentioned, the Umpire shall report the facts to the Commission, together with the recommended percentages, and the Corporation Commission hereby gives notice that such revised percentages may be substituted for the percentages provided for in this order.

Done at Oklahoma City this the 30 day of December, 1930.

Corporation Commission of Oklahoma. ——— ———, Chairman. Fred Capshaw, Commissioner. E. R. Hughes, Commissioner.

Attest: E. D. Hicks, Jr., Secretary.

[fol. 85] EXHIBIT "Y"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326. Order No. 5414

In the Matter of the Application of WIRT FRANKLIN for Rules and Regulations to be Established by the Commission to Prevent Waste of Petroleum in the Producing Oil Fields of the State of Oklahoma

Re Supplemental Application of OTTO BRADFORD for Additional Rules and Regulations in the Oklahoma City Pool

Order

Comes now the petitioner herein and various and sundry producers of oil in the Oklahoma City Pool in the State of Oklahoma, and the Commission having made an investiga-

tion of the matters alleged in the above petitions in this cause and of the conditions in the Oklahoma City Pool, and being fully advised in the premises, finds:

(a) That production in the Oklahoma City pool has heretofore and is now being carried out upon the time proration plan. During the hearings in this cause prior to the issuance of Order No. 5369 therein, much testimony was taken relative to whether or not waste would best be prevented by a continuance of the time proration plan or the application of a percentage proration plan somewhat similar to that in force in the other oil fields of Oklahoma. After the filing herein of the petition of Otto Bradford further hearings were had, being finally concluded, and the matter submitted on December 22, 1930. During the course of these hearings a percentage plan of proration having been approved by an Operators' meeting and submitted, the Commission directed the Operators' Committee heretofore appointed by the Commission for the Oklahoma City pool, to formulate and submit for the consideration of the Commission a revised plan for the application of percentage proration in the Oklahoma City pool. Pursuant to such direction the said Operators' Committee has filed a proposed plan with the Commission.

(b) That under the operation of the Proration Orders heretofore placed in effect by the Commission as shown by the reports of the Commission's Umpire, and filed with the Commission, certain wells in the Oklahoma City pool have produced during less than the time allowable under such orders, making said wells under produce, there has been no available market outlet for the oil produced from some wells in said pool which have produced in obedience to the terms of said orders, making certain wells under run and certain wells have produced more than the allowable time under said orders and are overproduced. It is therefore necessary in any change of plan to make provision whereby such wells may be brought to a condition of "even" under said orders, the order this day issued or any future orders.

(c) That conditions which have heretofore prevailed rendering it inexpedient to apply the percentage proration plan to the Oklahoma City pool, particularly lack of facilities to make a proper gauge of potential for the applica-

tion of percentage proration, have now become sufficiently modified that a reasonable percentage plan of proration can be applied.

[fol. 86] (d) That under the proration plan now in operation in the Oklahoma City pool, the basis upon which the time of opening and closing the wells has been a fixed number of hours in each 12 day period. The present period will come to an end at 7:00 A. M. January 3, 1930, and for the efficient operation of the plan this order should become effective as of that date and hour.

From and after 7 o'clock A. M. January 3, 1931, and until otherwise ordered by the Corporation Commission, such ratable production of oil from the Oklahoma City pool and such proration among the wells in said pool of the reasonable market outlet for said pool as may from time to time be ordered by the Corporation Commission, shall be applied in accordance with the following plan, to-wit:

1

(1) The period commencing at 7 o'clock A. M. January 3, 1931, and ending at 7 o'clock A. M. on the first day of April, 1931, shall constitute the first potential period, and each three consecutive calendar months thereafter, commencing at 7 o'clock A. M. on the first day of the first month of said three months period and ending at 7 o'clock A. M. on the day following the last day of the third month shall constitute a potential period:

(2) As to each well in the pool, the first potential determined during any potential period shall constitute its tentative potential for that period, and based on such tentative potential and the percentages of potential which the Corporation Commission allows to be produced from time to time during such potential period, the tentative allowable production of each well during such potential period shall be determined in the manner hereinafter provided, and, except as hereinafter otherwise provided, each well in the pool shall, during such potential period, be permitted to produce its tentative allowable production for such period so determined.

(3) As to each well in the pool, except as hereinafter otherwise provided, the corrected potential for each potential period shall be the average of the tentative potentials

so determined for that and the next succeeding potential period, to be determined as soon as the tentative potential for such succeeding period has been determined, and, based on such corrected potential and the percentages of potential which the Corporation Commission allowed to be produced from time to time during the potential period to which same is applied, the corrected allowable production for such potential period shall be determined, and the amount by which the actual production of any well during any potential period exceeded or was less than the corrected allowable for such potential period shall be carried over in to the next potential period as a charge or credit against or in favor of said well, as the case may be.

(4) In the event during any potential period any well, subsequent to the determination of its tentative potential for such period, is shot, cleaned out, deepened, tubed, put on air-gas lift, or plugged back in such manner as, in the opinion of the operator or of the Umpire, to materially affect its potential as determined in the next succeeding potential period, then the corrected potential of such well for said current potential period shall be agreed on by the operator of such well, the Umpire and the majority of the Operator's Committee, and in the event they are unable to so agree, the Umpire shall immediately refer the matter to the Corporation Commission for determination, and pending final determination by the Corporation Commsision, the [fol. 87] corrected potential of such well for such current potential period shall be that fixed by the Umpire and a majority of the Operator's Committee.

(5) The tentative allowable production and corrected allowable production of each well in the pool for any potential period shall be that determined as hereinabove provided, plus or minus, as the case may be, any credits or charges in favor of or against said well carried over from the preceding potential period.

2

(1) At 7 o'clock A. M. on the first day of each potential period, each well in the pool shall, except as hereinafter otherwise provided, be completely shut in, and remain shut in until opened for the purpose of having its tentative potential determined in accordance herewith, provided, that

notices as hereinafter prescribed, with respect to time of taking such potentials on the first day of any potential period, may be filed with the Umpire on or before 12 o'clock noon of the preceding day.

(2) Before any well in the pool is opened for the purpose of having its potential determined, the owner or operator thereof shall file with the Umpire at his office in Oklahoma City, on or before 12 o'clock noon of the day preceding the day on which such well is to be opened for such purpose, a written notice giving the name and address of the operator in charge of said well, the name of the operator's representative who will witness the test of said well, the name and location of the lease on which the well to be tested is located, the serial number of said well on the lease, and the hour, not earlier than 8 o'clock A. M. nor later than 1 o'clock P. M., at which the well will be opened for such purpose. Such notices shall remain on file in the office of the Umpire, and be subject to inspection by any producer in the pool, and it shall be the duty of the Umpire to maintain available for such inspection in his office from 1 o'clock to 5 o'clock each afternoon a list of all wells which are to be tested during the succeeding day.

(3) When, in pursuance hereof, a well is permitted to be opened for the purpose of determining its potential, it shall be permitted to produce for four hours to be taken continuously, whether or not the well produces continuously during such time, and to be computed from the hour and minute oil first flows into lease tankage from the oil and gas separator. The amount of oil produced from said well during said four hour period multiplied by six shall constitute the tentative daily potential of said well for the current potential period.

(4) For the purpose of determining the amount of oil produced during said four hour test period the oil produced during the period is to be gauged in lease tankage which has been strapped in accordance with the usual and customary practice prevailing in the Oklahoma City field, and the amount of oil produced shall be calculated on the basis of ninety-seven per cent tank tables. The usual and customary tests and deductions shall be made for water and B. S. content, and the oil shall be gauged only after it has stood in lease tankage for a period of at least one hour.

(5) The potential of each well in the pool is to be determined as soon as practical after seven o'clock A. M. on the first day of each potential period, provided, wells which on the 3rd day of January, 1931, are over produced under time proration are to remain shut in until they are even, and [fol. 88] wells which on the first day of any potential period have not served their shut in time and time charged against them account initial test, as provided by orders of the Corporation Commission, shall remain shut in until they have served such shut in time and time charged against them.

(6) The Umpire shall appoint a representative of an operator who is in no way interested in the well to be tested to be present and witness the test being made of each well, and it shall be the duty of the representative so appointed by the Umpire to remain at the well which is being tested during the entire time the same is being produced for the purpose of determining its potential, and to witness all operations, tests for B. S. and/or water content, measurements and/or calculations made for the purpose of determining the actual production of oil made by the well being tested during the test period as above defined. Immediately upon the completion of such test, the representative appointed by the Umpire and the representative of the operator shall file with the Corporation Commission, and a copy thereof with the Umpire, a written statement duly verified by both representatives on form to be approved by the Corporation Commission, showing the amount of oil produced by said well during the test period as above defined.

(7) In the event the Umpire's representative, and well owner's representative at the testing of the well, are agreed as to the daily potential of the well as determined by the test, the operator may continue forthwith to produce said well until there has been produced therefrom, including the amount produced during the test, the total allowable, to be calculated as hereinafter provided, for the current month. In the event the representatives of the Umpire and the well owner are not agreed as to the daily potential of any well, the well shall be shut in at the close of the test, and the matter referred to the Umpire. If the Umpire and the operator agree as to the daily potential of the well, the operator shall, thereupon, be permitted to produce the well until

it has produced, including the amount produced during the test, its tentative allowable for the current month based upon the potential so agreed upon. If well owner and Umpire are unable to agree as to the daily potential of any well, the matter shall be referred to the Corporation Commission for determination, and, pending final determination by the Commission, the operator shall be permitted to produce the well until, on the basis above outlined, it has produced a tentative allowable for the current month calculated on the basis of the daily potential as fixed by the Umpire.

3

(1) The tentative allowable production of any well for the remainder of the month of January, 1931, from seven o'clock A. M. on January 3rd, to seven o'clock A. M. on February 1, 1931, and for each month thereafter, shall be determined, (a) for the remainder of the month of January, by multiplying its tentative potential for said month by the percent of allowable production as fixed by the Corporation Commission for that month, and the product by 29, and, (b) for each month thereafter, by multiplying its tentative potential for said month by the percent of allowable production for that month as fixed by the Corporation Commission, and the product by the number of days in the month, and by adding to or subtracting from the product so obtained all credits or charges, as the case may be, carried over from the preceding month and/or potential period, provided, the tentative allowable production of wells, which on the 3rd day of January, 1931, or on the first day of any subsequent potential period are shut in account being over produced under time proration or account not having served their shut in time and time charged against them account initial test, as prescribed by orders of the Corporation Commission, for the remainder of the month in which they, respectively, become even or complete their shut in time and time charged against them account initial test, shall be determined by multiplying their tentative potential last determined by the percent of allowable production [fol. 89] for that month as fixed by the Corporation Commission, and the product by the number of days in such month subsequent to the day and hour on which such wells, respectively, became even or completed their shut in time and time charged against them account initial test.

(2) The Umpire shall advise each operator each month by written notice the tentative allowable production for such month of each well being operated by such operator, such notice to be given for the month of January, 1931, on, or as soon as practical after the third day of said month, and for each month thereafter, on, or as soon as practical after the first day of said month, and no operator shall produce from any well in the pool during any month a greater amount of oil than its tentative allowable production for that month determined as herein provided.

(3) The under produced time of wells which on January 3, 1931, are under produced on time proration, shall be converted into barrels of oil on the basis of the tentative potentials of said wells respectively, for the first potential period, and the amount in barrels of oil of the under production of each said well so arrived at shall be credited to it as an underage as of 7 o'clock A. M. on the third day of January, 1931.

4

(1) Each operator shall each day furnish to the Corporation Commission on forms to be prescribed by the Commission, written statements sworn to by an authorized representative of the operator, showing for the preceding day the name and address of the operator, the name and location of the lease on which are located either oil or gas wells, and as to each well on each lease, the tentative allowable production for the current month, determined as herein provided, the overage or shortage from the preceding month, the net tentative allowable production for the current month, the production on the day for which the report is made, the balance remaining of tentative allowable production for the current month, and as to each lease, the amount of oil shipped by pipe line and by tank car with the name of the pipe line and/or railway company transporting same, as the case may be, and the name and address of the purchaser of oil so shipped.

(2) Each operator shall also file with the Corporation Commission each day, on forms to be prescribed by the Commission, sworn statement showing for the preceding day the total amount of gas produced from each well which has been classified by the Corporation Commission as a gas

well, the disposition made of the gas produced therefrom, the amount of hydro-carbon liquid produced therefrom, and the disposition made of such liquid.

(3) Where gas wells which produce hydro-carbon liquid are located on the same lease on which are located oil wells, the gas wells producing such liquid shall not be permitted to produce into the same tanks or into tanks in any way connected with the same tanks into which oil wells are producing. In the event the liquid production from gas wells located on a lease on which are also located one or more oil wells, is disposed of as pipe line oil, the amount of oil produced by gas wells on any such lease during any month shall be deducted from the allowable production for said month of the oil wells located on the same lease, such deduction to be made from the allowable production of each such oil well in proportion to its potential determined as hereinabove provided.

[fol. 90] 5

(1) Before testing any wells for potential during the month of January, 1931, and within five days after the end of each month thereafter, each operator shall file with the Corporation Commission on forms approved by the Commission, a sworn statement with respect to each lease, showing the name and address of the operator thereof, the name and location of the lease, a list of the lease tanks on the lease showing pipe line numbers of each tank, a list of all tanks used as lease tanks off the lease, showing the location, pipe line company numbers thereof, and the amount of oil in each tank as of 7 o'clock A. M. on the 3rd day of January, 1931, and as of 7 o'clock A. M. on the first day of each month thereafter.

(2) The umpire shall forward to each producer each month a statement showing as to each oil well in the field its potential, its tentative allowable for the preceding month, any overage or underage as of the first day of the preceding month, its net tentative allowable for the preceding month, its actual production during the preceding month, and its overage or underage, if any, as of 7 o'clock A. M. of the first day of the current month, and showing as to each lease the stock of oil on hand as of 7 o'clock A. M. the first day of the preceding month, the total production dur-

ing the preceding month, the total shipments during the preceding month by pipe lines and tank cars, showing the amount shipped by each, and stocks on hand as of 7 o'clock A. M. the first day of the current month.

(3) Copies of all reports herein provided to be furnished to the Corporation Commission shall at the same time be furnished the Umpire at his office in Oklahoma City.

(4) Any person, firm or corporation transporting crude oil from the Oklahoma City field shall file with the Corporation Commission each month, on or before the tenth day of the month, a statement in duplicate showing the number of barrels of crude oil run from each lease in the field during the preceding month, and each railroad company which transports crude oil by tank car from Oklahoma City shall each month file with the Corporation Commission a statement in duplicate showing as to each shipment of oil from Oklahoma City, the name of the shipper, the name of the consignee, the destination of the shipment, the number of cars shipped showing the serial number of each car and the weight of the shipment.

6

It is hereby made the specific and mandatory duty of the Umpire to report any violations of this order to the Corporation Commission.

(e) That under the present conditions the application of a percentage plan of proration will serve to prevent waste in the Oklahoma City pool.

(f) That due notice on all persons and classes interested in the proceeding and in the rules and regulations to be established hereby has been given, as required by law, by publication for a reasonable time in a newspaper of general circulation in this State and otherwise.

It is therefore ordered by the Corporation Commission of the State of Oklahoma as follows:

Due to the situation in regard to underrun and underproduced wells, the percentage of allowable runs this day fixed for the Oklahoma City pool, shall until the further order of the Commission, and notwithstanding any other provision of this Order or of the general order this day issued, be applied as follows:

[fol. 91] 1. All overproduced wells shall be entirely shut in until they have made up such overage and are again "even".

2. Wells which are even shall be allowed to produce only 2/3 of their allowable production as fixed in the general order this day issued.

3. The amount of allowable production said general order having been calculated upon the percentage of all wells in said pool whether underproduced or overproduced or even, that amount of oil, which, except for this section of this order, would be allotted to the overproduced wells and 1/3 of that amount of oil which, except for this section of this order, would be allotted to the even wells, shall be allotted to the underproduced wells in said pool. In addition to the allowable production of said wells as fixed in the general order this day issued, pro rate according to the potential production of said underproduced wells until all of said underproduced wells are even, at which time the Umpire shall forthwith report that fact to this Commission, that the Commission may then make a supplemental order placing all wells in said pool upon an equal basis of production.

Jurisdiction of the subject matter of this order and of this cause is hereby retained by the Corporation Commission and notice is hereby given that supplemental and ancillary orders may be made herein from time to time as required by new developments and as instructions to the Umpire and Operators' Committee and said Umpire and Operators' Committee are instructed to report from time to time for the action of this Commission any pertinent facts or recommendations bearing upon the operation of the rules and regulations.

Done at Oklahoma City this 30th day of December, 1930.

Corporation Commission of Oklahoma. ——, Chairman. Fred Capshaw, Commissioner. E. R. Hughes, Commissioner.

Attest: E. D. Hicks, Jr., Secy.

[fol. 92] EXHIBIT Z

Certificate

STATE OF OKLAHOMA,
Oklahoma County, ss:

To all to whom these presents shall come, Greetings:

I, E. D. Hicks, Jr., Secretary of the Corporation Commission of Oklahoma, do hereby certify that the following hereto attached is a true and correct copy of record on file in this office of the Corporation Commission of Oklahoma, covering Order #5396 under cause #10326, the original of which is now on file and matter of record of this office.

In testimony whereof I hereunto set my hand and affix the seal of the Corporation Commission of Oklahoma.

Done in Oklahoma City this the 5th day of December, 1930.

E. D. Hicks, Jr., Secretary Corporation Commission of Oklahoma. (Seal.)

[fol. 93] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326. Order No. 5396

In the Matter of the Application of WIRT FRANKLIN for Rules and Regulations to be Established by the Commission for the Prevention of Waste of Crude Oil and Petroleum in the Producing Oil Fields of the State of Oklahoma

Order

On the 28th day of October, 1930, the Commission made and entered its Order No. 5369 in the above styled and numbered cause, by the terms and provisions of which rules, regulations and requir-ments looking to the prevention of waste in the productioa of crude oil and petroleum products within the State of Oklahoma were established. A supplemental Order was also made and entered on the 3rd day of November, 1930, dealing with the matter of the equalization of the amount of crude oil taken from Oklah-a City pool under previous orders of the Commis-

sion, for the purpose of allowing under produced wells to produce in such way and manner as to catch up with the equally or evenly produced wells in said field. A hearing was had by the Commission November 24th, 1930, upon the Commission's own initiative, for the purpose of attempting to determine in the Oklahoma City oil field the matter of whether or not proration in the future should be based and conducted upon the time basis of proration, or whether or not it should be changed, and conducted upon the percentage or potential basis.

Testimony at all of the hearing- heretofore held by the Commission had been introduced with respect to the difficulty of ascertaining the exact amount of oil produced in a given time, and the difficulty in securing an equal and fair taking as between the various producers of the pool. At each of these hearings, suggestions have been made as to the propriety of requiring verified reports at stated intervals, from the operators, in order to secure this information in a more substantial form than has heretofore been possible under the method in use. It has also been suggested at different times, without dissention or dispute, that certain operators in the Oklahoma City pool have produced their wells by the method commonly termed "stop-cocking"; that is, by using the time allotted to any given lease in the production of the wells by heads and not continuously for the period of time allotted to the lease or to the well. This method of production, it is agreed, results in an unfair taking from numerous wells in the field, as compared to the taking of other wells which are operated on an even time basis—that is by opening the well and allowing it to stay open and flow continuously for the period of time during which it is entitled to flow under the time basis of proration.

The Commission after having given considerable consideration to these matters, is of the opi-on and finds:

[fol. 94] First. That a supplemental Order should be promulgated requiring a written statement signed by some authorized representative of the operator, and verified under oath by such operator, containing the number of the well, as well as the location of the lease on which same is located; the amount of time which the well was under produced or over produced, as the case may be, under present

and prior orders of the Commission at the beginning of the current 12 day period; the current allowable time to be credited to said well for the current 12 day period, not including any underage accumulated prior to the first day of said period; the accumulated allowable time for the current 12 day period to be arrived at by adding together the amount of the underage, if any, and the current allowable time; the amount of the accumulated allowable time for the current 12 day period which has been charged to said well up to 7 o'clock A. M. on the preceding day; the number of times said well was open for production during such preceding 24 hour period, and the hour and minute when oil from said well first reached the oil and gas separator each time the well is opened; the number of times such well was shut in during such 24 hour period, and the hour and minute each such shutting in operation was completed; the amount of time charged against said well in pursuance of this and prior orders of the Corporation Commission during such preceding 24 hour period; the amount of allowable time remaining to the credit of such well for the remainder of the current 12 day period.

Second. That in the operation of the leases and wells in the Oklahoma City oil field under the present time proration basis, and in the computation of the 4 hour period as at present allowed by supplemental Order No. 5374 entered on November 3, 1930, the 4 hours allottable should be taken continuously and should be computed from the hour and minute oil production from any of said wells first reaches the oil and gas separator, and that in case any well is entitled to an allowable time of less than 4 hours during any current 12 day period, then when such well is opened for the purpose of taking its allowable time, such time shall be computed from the hour and minute oil produced from said well first reaches the oil and gas separator, and shall be computed continuously until such time is used; that any well under produced more than 4 hours shall be entitled to make up such underage in 4 hour periods to be computed as above provided, and if any such under produced well in making up its underage, comes to a point when its underage is less than 4 hours, then such remaining underage shall be taken continuously, provided, in the event a well which is making up under production under the terms and provi-

sions of Order No. 5374 adopted November 3, 1930, is not able to produce continuously for a full period as above defined, solely on account of the fact that the battery of lease tankage to which such well is connected is full, then and in that event such well shall not be charged with the full period, but shall be charged with the portion thereof prior to the hour and minute on which such battery of lease tankage became full, and the fact that such well was unable to produce for a full period solely for such reason, and the number and capacity in barrels of the battery of lease tankage to which such well is connected shall be stated in the verified statement to be filed with the Corporation Commission as hereinabove provided.

It should also be required that copies of all statements filed with the Corporation Commission in pursuance hereof, shall at the same time be filed with the Umpire at his office in Oklahoma City, Okla.

[fol. 95] It is therefore the order of the Commission, premises considered, that from and after the effective date of this order, and until otherwise ordered by the Corporation Commission, each producer of oil in the Oklahoma City Field shall file with the Corporation Commission each day, as of 7:00 o'clock A. M. of such day, a written statement duly signed and verified under oath by such producer, or the authorized representative of such producer, giving as to each well in said field operated by such producer which was opened for production at any time during the preceding 24-hour period, the following information, to-wit:

(1) The number of the well and the name and location of the lease on which same is located.

(2) The amount of time which said well was under-produced or over-produced, as the case may be, under present and prior orders of the Corporation Commission at the beginning of the current 12-day period.

(3) The current allowable time to be credited to said well for the current 12-day period, not including any underage accumulated prior to the first day of said period.

(4) The accumulated allowable time for the current 12-day period to be arrived at by adding together the amount of the underage, if any, as shown in paragraph two above,

and the current allowable time as shown in paragraph three above.

(5) The amount of the accumulated allowable time for the current 12-day period as shown in paragraph four above which has been charged to said well up to 7:00 o'clock A. M. on the preceding day.

(6) The number of times said well was opened for production during such preceding 24 hour period, and the hour and minute when oil from said well first reached the oil and gas separator each time the well was opened.

(7) The number of times such well was shut in during such preceding 24-hour period, and the hour and minute each such shutting-in operation was completed.

(8) The amount of time charged against said well in pursuance of this and prior orders of the Corporation Commission during such preceding 24-hour period.

(9) The amount of allowable time remaining to the credit of such well for the remainder of the current 12-day period.

It is the further order of the Commission that in computing the 4-hour period of production allowed by supplemental Order No. 5374, entered herein on November 3, 1930, the four hours shall be taken continuously, and shall be computed from the hour and minute oil produced from said well first reached the oil and gas separator.

If any well is entitled to an allowable time of less than four hours during any current 12-day period, then when such well is opened for the purpose of taking its allowable [fol. 96] time, such allowable time shall be taken continuously, and the allowable time computed from the hour and minute oil produced from said well first reached the oil and gas separator, as above provided.

Wells under-produced more than four hours shall be entitled to make up such underage in 4-hour periods to be computed as above provided. If any such under-produced well, in making up its underage, comes to a point when its underage is less than four hours, then such remaining underage shall be taken continuously provided, in the event a well which is making up under-production in pursuance of Order No. 5374, entered herein on November 3, 1930, is not

able to produce continuously for a full period as above defined, solely on account of the fact that the battery of lease tankage to which such well is connected is full, then and in that event such well shall not be charged with the full period, but shall be charbed with the portion thereof prior to the hour and minute on which such battery of lease tankage became full, and the fact that such well was unable to produce for a full period solely for such reason, and the number and capacity in barrels of the battery of lease tankage to which such well is connected shall be stated in the verified statement to be filed with the Corporation Commission as herein above provided.

Copies of all statements filed with the Corporation Commission in pursuance hereof shall, at the same time, be filed with the Umpire at his office in Oklahoma City, Oklahoma.

Done at Oklahoma City this the 4th day of December, 1930.

Corporation Commission of Oklahoma. ——, Chairman. Fred Capshaw, Commissioner. T. R. Hughes, Commissioner.

Attest: E. D. Hicks, Jr., Secretary.

[File endorsement omitted.]

[fol. 97] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF DEFENDANTS TO SECOND AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT—Filed Dec. 27, 1930

Come now the defendants and for their answer to the plaintiff's second amended and supplemental bill of complaint, hereinafter referred to as "bill of complaint", allege and state:

I

Defendants move the court to require the plaintiff to make a further and better statement of the allegations contained in paragraph numbered "X" of its said bill of complaint by stating and setting forth the description of its oil

and gas leases on lands in other oil and gas fields in Oklahoma in addition to those described in paragraph numbered "VI" of said bill of complaint, and to give the names of the respective oil and gas fields in which said other leases are located and to state the potential capacity of the several wells in each of said other oil and gas fields.

II

Defendants move to strike from said bill of complaint all allegations therein contained relating to the orders of the defendant Corporation Commission dated respectively June 30, 1930, August 30, 1930, and September 10, 1930, for the reason that said orders have by their terms expired and are no longer in force and effect.

[fol: 98] III

Defendants move to dismiss said bill of complaint for the reason that same does not set forth facts sufficient to constitute a valid cause of action in equity.

IV

Without waiving the above motions, or either of them, defendants, for further answer, state:

1. Defendants admit the incorporation of the plaintiff, as alleged, and the citizenship and residence of the parties and the value of the matter in controversy, as alleged by the plaintiff, and that the matter in controvery arises under the Constitution and laws of the United States, and admits that the Corporation Commission of Oklahoma is a board created and vested with certain powers by Article 9 of the Constitution of said state, and that the defendants Fred Capshaw, E. R. Hughes and C. C. Childers are the duly elected, qualified and acting Corporation Commissioners of said state and have comprised the Corporation Commission of said state during all the time mentioned in said bill of complaint; and they allege that said Commission is vested with certain additional powers by the provisions of the Act of the Oklahoma Legislature approved February 11, 1915, known as the "Oil Conservation Act", referred to in said bill, and by the provisions of an Act of the Oklahoma Legislature, passed at its 1907-8 Session, incorporated in

the Compiled Statutes of Oklahoma, 1921, as Section 3498, and other sections and provisions of the Laws of Oklahoma relating to the conservation of the oil and gas resources of said state and the enforcement thereof.

2. They admit that the plaintiff is now and has been, since its incorporation, engaged in the business of producing and refining crude oil and transporting and marketing petroleum, natural gas and their products in intra-state [fol. 99] commerce, and that plaintiff in transporting and marketing the refined products of crude oil in interstate commerce, but are without knowledge that plaintiff is transporting and marketing petroleum (in its unrefined state) in interstate commerce; admit that plaintiff owns and operates an oil refinery at Enid, Oklahoma, with a capacity of refining 15,000 barrels of crude oil per day, and that said refinery plant refines and manufactures gasoline, kerosene, lubricating oils, greases and other by-products; that they are without knowledge that plaintiff owns approximately 735 tank cars which it uses in the distribution of its refined products in various states named in said bill, and are without knowledge that plaintiff controls and operates approximately 470 miles of pipe line for the transportation of oil and gas in Oklahoma and other states, but admit that plaintiff controls and operates a number of miles of pipe line for said purpose; are without knowledge that plaintiff owns and operates approximately 263 retail gasoline filling stations and 256 wholesale gasoline stations in the states named in said bill which it supplies from its Enid refinery, but admit that plaintiff owns a large number of gasoline filling stations and wholesale gasoline stations which it supplies from said refinery, and admit that all of said property represents an investment of several million dollars.

3. Defendants admit that plaintiff is and has been for some time past, but denies that it has been at all times mentioned in said bill, the owner and holder of oil and gas leases, as alleged by it, on the lands particularly described in paragraph VI of said bill. They admit that plaintiff has drilled the wells on said tracts of land as alleged in said bill at the approximate cost therein set forth and that said wells were of the potential capacities respectively as alleged therein.

4. But defendants allege that the described lots located in the Oklahoma City field in Oklahoma County covered by leases belonging to plaintiff, are in three separate small tracts or parcels of land, that is to say, Lots 30 to 35, inclu-
[fol. 100] sive, in Block 2, Roosevelt Place Addition to Oklahoma City, upon which one of plaintiff's large wells is located, constitute one tract of land, and contain .48 of one acre of land; that Lots 50 to 51 in said Block 2 constitute another separate tract of land containing .16 of one acre of land; and that Lots 23 to 26, inclusive, in Block 9, Armourdale Addition to Oklahoma City, upon which the other of plaintiff's Oklahoma City field wells is located, constitute a third and separate tract of land containing .31 of an acre of land; and they state that said three tracts of land are not contiguous and that they are situated with reference one to another and to other lands upon which companies and individuals other than plaintiff have and own oil and gas leases as shown on a map hereto attached, marked "Exhibit No. 1", and made a part hereof, on which plaintiff's leased land is colored red. Said map covers the most of Section 2, Township 11 North, Range 2 West, which contains 640 acres of land, and comprises less than one-tenth of said field. They allege that in said field producing wells of large capacities, drilled into the producing horizon in which plaintiff's wells in said field obtain production, have been drilled by others owning leases on land surrounding and in the general vicinity of the lands leased to plaintiff, which other wells are located with reference to the acreage covered by plaintiff's leases as shown by black spots on said map hereto attached and marked "Exhibit No. 1."

5. Defendants further allege that the present developed area in the Oklahoma City field comprises about 7,000 acres of land and that there have been drilled therein approximately 648 wells, productive of oil, as are plaintiff's wells, in large quantities; that a comparatively small portion of said field, on the north and northwest, wherein plaintiff's said wells are located, called the "Town Lot" portion thereof, covers several laid out and platted additions to Oklahoma City, some within and others adjourning the southeastern corporate limits of said city, but that by far the greater portion of said field lies south and southeast of

said "town lot" portion of said field, extending a distance [fol. 101] of several miles; and that the wells drilled in that portion of said field, other than the "town lot" portion thereof, are located, generally speaking, and as is customary, one well to each ten acres of land, as is illustrated by the wells drilled on the southeast quarter of said Section 2 and spotted on said map, Exhibit No. 1, but that within said corporate limits and said additions, wells are usually located and drilled on less than ten acre tracts; but that, as is shown by Exhibits No. 1, heretofore attached, the wells on the lands surrounding plaintiff's leased lands are drilled upon larger tracts of land than the tracts covered by plaintiff's said drilled leased acreage. They allege that it is estimated by petroleum engineers and geologists that the amount of oil which will be ultimately recovered from the formation into which plaintiff's wells in the Oklahoma City field have been drilled will not exceed 20,000 barrels to the acre, and defendants aver that if the plaintiff be not limited as provided by the Oil Conservation Act of Oklahoma in the operation of its wells, it will be able, under the circumstances, to extract far more than its fair share of said oil, and the injury to many other producers in said field will be far greater than the injury, if any will at all accrue, to the plaintiff, if required to obey said Act.

Defendants further allege that the discovery well in the Oklahoma City field was completed in December, 1928, and that said field thereafter very rapidly developed by the completion from time to time of additional wells therein, and that said field was first placed under proration by an order of the defendant Corporation Commission, effective October 15, 1929, and that said field has been operated under proration orders of the Commission ever since said date, and they allege that the plaintiff acquired its said leases in said field after October 15, 1929, with a knowledge of the fact that the potential production of said field greatly exceeded the reasonable market demand for production from said field and that if waste therein was to be prevented and ratable taking enforced, proration orders of the defendant Commission would necessarily have to be made and enforced; and that plaintiff drilled its said wells in said field in the Summer and Fall of 1930 with a full knowledge of the existence of proration orders issued by said Commission affecting all the wells then in said field and such

as should be later drilled therein. They further allege that [fol. 102] plaintiff built its pipe line, alleged in its bill of complaint to have been constructed, whereby it has a pipe line connection between its wells in said field and its refinery at Enid, Oklahoma, after the completion of its first producing well in said field, and completed said pipe line on or about September 10, 1930, and did so with a full knowledge of the existence of said proration orders then outstanding affecting said field, and that if plaintiff complied with said orders it would be allowed to produce only its ratable share of the allowable production in said field. They allege that plaintiff made no protest to the defendant Commission or any of the defendant Commissioners against the existence, validity, or any of the terms of said orders, prior to the filing by plaintiff of this suit on September 15, 1930, which was after the completion of said pipe line. They further allege that at the time of the making of the Commission's order of October 28, 1930, pleaded by the plaintiff, the potential capacity of the plaintiff's two wells in said field was approximately 10400 barrels per day, and that at the same time the total potential capacity of all producing wells in said field was approximately 2,800,000 barrels per day, and that at said time the reasonable market demand for crude oil in said field was 131,095 barrels per day.

6. They admit that plaintiff is the owner of oil and gas leases on the lands described in paragraph VI of said bill, located in Seminole County, Oklahoma, but allege that said leases were acquired by plaintiff after the passage and approval of the Oklahoma Oil Conservation Act attacked by plaintiff. They allege that the lands held under lease by plaintiff in Seminole County, described in said paragraph VI of its bill of complaint, are in two separate tracts, and held by plaintiff under separate oil and gas leases; that one of said tracts of land, namely, the E2 of the SE4 of the NE 4 of Section 14, Township 7 North, Range 6 East, Seminole County, Oklahoma, contains 20 acres of land, more or less; that same is located in what is known as the "Little River" [fol. 103] oil field, being a part of the so-called "Greater Seminole" oil field; that three of the nine wells alleged by plaintiff in paragraph IX of its bill to have been drilled on said leases in the Greater Seminole field were drilled on said 20 acres of land, its Well No. 3 thereon being a twin well to

its Well No. 2 thereon, and said Well No. 3 was drilled and completed into a producing horizon above the depth at which Wells No. 1 and 2 were completed—being one well in the center of one ten-acre tract and two in the center of the other ten-acre tract; that said Little River oil field cover about six and one-half sections of land and that approximately 373 producing oil wells have been drilled therein, including plaintiff's said three wells, and that plaintiff's wells are located in about the center of said field, and that seven other companies own each a separate lease adjoining or cornering the land covered by plaintiff's said lease, and that there are ten wells—each well in the center of a ten-acre tract—offsetting the same either directly or diagonally, so that said twenty acres of land is completely surrounded by other producing wells belonging to other companies; that in said field as a whole the wells are located, generally speaking, one well to each ten acres of land; that the wells in said field have a potential production of approximately 43,000 barrels per day; and that the allowable production under the order of the defendant Corporation Commission dated October 28, 1930, conforms to the reasonable market demand and is 21,243 barrels per day or about 50% of the potential production of the wells in said field.

They further allege that the other tract of land, namely, the S2 of the SW4 of Section 9, Township 6 North, Range 6 East, Seminole County, Oklahoma, on which there is an oil and gas lease owned by plaintiff to the extent of an undivided one-half interest, is located in what is known as the "Konawa" oil field, which comprises a part of the so-called "Greater Seminole" oil field; that the 80 acres of land covered by the said lease is located in the north end of said [fol. 104] oil field and that six of the nine wells alleged by plaintiff in paragraph IX of its bill of complaint to have been drilled on its leases in the Greater Seminole field have been drilled on said eighty acres of land, there being one well to each ten acres of said land, except the east twenty acres thereof on which twenty acres no well has been drilled; that said Konowa field covers approximately two and one-half sections of land and there have been drilled (on 10-acre locations) offsetting the plaintiff's said six wells to the north, northwest, west, southwest and south, so that said land is surrounded on all sides, except the east, by pro-

ducing oil wells belonging to other companies; that the wells in said Konawa field have a potential production of approximately 84,000 barrels per day, and that under the order of said Commission dated October 28, 1930, the allowable production from said field conforms to the reasonable market demand and is approximately 17,117 barrels which are allowed to be produced at the rate and on the basis set forth in paragraph 12 of the decretal part of the said order of October 28, 1930.

7. Defendants admit that plaintiff is the owner of an oil and gas lease covering the lands in Garfield County, Oklahoma, described in paragraph VI of said bill of complaint, on which there is a producing well and near which there are no other producing wells, but defendants are without knowledge that the plaintiff owns oil and gas leases on approximately 600 acres of land surrounding said well. They deny that there are no correlative leasehold owners of oil and gas rights in the pool where said well is located and from which it obtains its production and that there are no neighboring oil and gas lessees whose lands are being drained by said well, and aver that oil and gas leases are held by other operators around plaintiff's described holdings in said county and that other wells are being drilled on such surrounding acreage in search for oil from the same producing formation from which said well of the plaintiff is producing; and they further aver that plaintiff's said producing well came into production on or about May 29, 1930.

[fol. 105] 8. Defendants allege that the plaintiff never at any time prior to September 15, 1930, when it filed this suit, sought any relief against the issuance or enforcement of the proration orders of said Commission which had theretofore been issued, beginning with the order of Aug. 9, 1927, although many of said prior orders affected its then-existing production in the Greater Seminole Area, and did not seek any such relief until after the completion of its first well on its extremely small town lot lease, its .48 acre lease, in the Oklahoma City field, and the completion of its pipe line into said field when its situation became for the first time one where, if it could prevent the enforcement of the Conservation Act of Oklahoma and the said proration order then in force affecting said Oklahoma City field, it

could and would gain an unfair and inequitable advantage over other producers whose wells are upon larger tracts of land in said field than plaintiff's and not having their own outlet for their oil; and they say that, by reason of these circumstances, the plaintiff is guilty of laches and that plaintiff acquiesced in the enforcement of said law prior to the time when it could gain a decided advantage over its neighbors by striking it down, does not come into this court with clean hands, and now seeks the aid of this court to gain an unconscionable advantage over others.

9. They admit that the Oklahoma Legislature passed the laws pleaded by plaintiff.

10. They admit the making and entry by the defendants Fred Capshaw, E. R. Hughes and C. C. Childers, as Corporation Commissioners of the State of Oklahoma, and acting as such Commission, of the various proration orders, including the findings of fact and the decretal parts thereof, pleaded by plaintiff, copies of which are attached to said bill of complaint. They deny that the findings of fact in paragraph "F" of the Commission's order of June 30, 1930—No. 5189—was without any evidence before said Commission.

[fol. 106] 11. Defendants allege that before either of the said orders of June 30, 1930, August 30, 1930 and October 28, 1930, was made, a petition was filed, in each instance with the defendant Corporation Commission in which facts and circumstances were set forth, which, if true, made it the duty of said Commission and members thereof to proceed in accordance with the provisions of said Oil Conservation Act to conduct a hearing and determine whether or not orders, rules and regulations should be made and prescribed for the enforcement of the provisions of said Act, and praying for the making and entry of orders, rules and regulations accordingly; that said petitions respectively were duly set down for hearing at a time certain, and at the office of the said Commission in the Capitol Building at Oklahoma City, Oklahoma, and that in each case the said Commission issued a notice to all persons and classes interested, advising of the time and place of the hearing, and caused same to be published in a newspaper of general circulation in said state, and in addition thereto, issued and caused to be duly served a notice in writing to all persons,

firms and corporations, including the plaintiff herein, known to the Commission to have any interest in said proceeding; and that in each such instance, the Commission, at the time and place fixed, conducted an open public hearing on the said petition at which many persons interested in said matter personally appeared, and that the Commission then and there received and heard evidence fully establishing, in each instance, the necessity for the orders sought, and expressly offered to all persons interested an opportunity to be heard, and that at the conclusion of the hearing in each case, said Commission made and entered its findings of fact and its orders, rules and regulations as con-
[fol. 107] tained and set forth in the said three orders respectively, as shown by the copies thereof attached to plaintiff's bill of complaint.

12. They allege that the curtailment of the production of oil in each of the oil fields and pools affected by the said orders respectively and by the rules and regulations therein set forth, was to an amount of oil which, from the evidence before the Commission, conformed to the reasonable market demand for crude oil in said fields or pools respectively, and further allege that at the times of making and entering the said orders respectively, the potential production of the wells in the said fields, respectively, greatly exceeded the reasonable market demand for crude oil in said fields respectively, as was found by the said Commission at the time of making and enterng the said orders, and that such excess of potential production over reasonable market demand continued throughout the period of time that the said orders continued in force, and that there is at this time a very large excess of potential production in said fields over and above the reasonable market demand for oil in said fields, and they state that it was necessary that the said orders be made and entered in order to prevent those wastes of crude oil in said fields which are defined and prohibited by the said Oil Conservation Act. They allege that the amount of the potential production of each of the pools placed under proration in and by the said orders respectively, was found by the said Commission, and was at the dates, respectively, of said orders, the amounts, respectively, stated in the said orders in the
[fol. 108] case of each such pool and that the amount of

the then existing reasonable market demand for crude oil in each of said pools, respectively, is stated and set forth in said orders.

They allege that the Oklahoma City field has been in a condition of constant development and expansion, ever since it was opened up in December, 1928, and additional wells are at this time being drilled therein; that the wells are of the unusual depth of over 6,000 feet, the area of prolific production is unusually large, the wells have ranged in initial potential capacity from 2,500 to 90,000 barrels per day, that some of the largest wells have been completed during recent months, and that the gas pressures in the producing formations are the highest encountered in any field in the state, being, usually, initially in excess of 2,000 pounds to the square inch. They further state that said field is the youngest field of consequence in the state, and came into production at a time of overproduction of oil elsewhere in the state and in the nation, and at a time when the common purchasers of oil had no desire to purchase from new fields, with the result that at least as early as the Fall of 1929, by which time a number of wells of large capacity had been completed in said field, the reasonable market demand for oil in said field has been far below the potential capacity of its wells; that in its order of October 28, 1930, the Commission found that the potential of said field had increased to 2,800,000 barrels per day, and additionally, it made the following findings of fact, namely:

"The Commission finds that the full potential production from the Oklahoma City pool cannot be produced without waste, including physical waste and waste incident to the production of crude oil or petroleum in excess of the reasonable market demand, and that the reasonable market demand from said pool at the present time is approximately 131,095 barrels per day, and that in the month of November said reasonable market demand from said pool will be approximately 134,589 barrels per day, and that in the month of December the reasonable market demand from said pool will be 131,003 barrels per day, and that the market demand herein named is somewhat contingent upon transference by the purchasing companies of purchasing power from the 'Class A' pools herein to the Ok-

lahoma City pool and upon ability to transfer pipeline connections, and the Commission therefore finds that the [fol. 109] orders, rules and regulations should be made sufficient flexible so that increases or decreases in market demand from said Oklahoma City pool and increases or decreases in potential production therefrom, can be recognized by ancillary orders of the Commission, and that for this purpose the Umpire and Operators' Committee should be instructed to compute from time to time, the rate of curtailment necessary in order to conform the permitted to the reasonable market demand from the said Oklahoma City pool and to report the same to the Commission with the facts in support thereof as a basis for such ancillary order; it being understood, however, that whatever reasonable market demand develops for crude oil from the Oklahoma City pool shall be prorated among all the producing wells therein, so that each well will be permitted to produce its proportionate share of the amount of oil that may be produced from said field without waste."

In said order of October 28, 1930, from the evidence before it, the Commission further found as facts the following, to-wit:

"The Commission finds from the evidence that crude oil and natural gas occur together, or in close proximity to each other in the ground, and that there is a common gas pressure throughout a common pool which exerts an energy or force to move the gas and oil toward the point of least resistance, and, therefore when wells are drilled into a pool or structure the oil and gas become migratory, and, having the power of self transmission, will move from one property to another, underground, in such pool; and that when some of the wells in such a common pool are permitted to produce at a greater proportion of their capacity than others, drainage occurs from the less active to the more active wells, if such disproportionate condition is continued; that in the Oklahoma City pool there is a heavy gas pressure which would cause such drainage should disproportionate taking of crude oil and gas be permitted; that the history of the oil producing business in this and other surrounding states shows that in the case of flush pools where proportional taking from the wells is

not enforced, and where the full production from the pool cannot be taken, either because of inadequate transportation facilities or because the reasonable market demand does not equal the potential production, producers who do not have physical or market outlets will be forced to produce their wells to capacity in order to prevent drainage of the oil to the wells of such producers as do have adequate physical or market outlets. In such cases, in the absence of adequate steel storage available to every producer, some of them will flow the oil into earthen pits. This has occurred many times in the oil pools in Oklahoma and surrounding states and has always caused actual physical waste of the crude oil through evaporation, leakage, and washouts to a very large extent. The Commission finds that this would be the case in the Oklahoma City field, and in many other fields of the state if production were not curtailed as provided in this order.

"The Commission further finds that to permit the wells in the Oklahoma City field to flow wide open and continuously, without limitation as to time, would cause serious underground waste."

[fol. 110] 13. They further allege that although the plaintiff herein was a party to the said proceedings in the case of each of the said orders, and had been duly notified of the hearings to be conducted, and had actual advance knowledge thereof, it made no objection and took no exception to the said orders at the time they were made nor afterwards (except as hereinafter stated), took no appeal therefrom or any thereof to the Oklahoma Supreme Court and did not and has never at any time sought to obtain any order of the Supreme Court of Oklahoma suspending or superseding the enforcement of said orders or any thereof, and that, therefore, the plaintiff has waived its right to now question the validity of said orders or any thereof or any part thereof, either in this suit or otherwise; except that the plaintiff, through its president, H. H. Champlin, did appear at the hearing conducted upon the said application upon which the said order of October 28, 1930, was based, and he, the said H. H. Champlin, testified as a witness in opposition to the granting of any order based on the application for said order, and in his testimony stated substantially the same facts with reference to the ownership by plaintiff of oil

wells and production and of a refinery and pipe line as are set forth in paragraphs V to X, both inclusive, of its bill of complaint filed herein; but the plaintiff failed to except to the said order of October 28, 1930, when entered or afterwards, or to take any appeal therefrom, and made no objection to this Commission or the members thereof, other than in the testimony given by him, as aforesaid, and did not appeal therefrom to the Supreme Court of Oklahoma as it had the absolute right to do under the laws and Constitution of Oklahoma, and sought no suspension or supersedeas of said order or any part thereof at the hands of said Supreme Court, as under said Constitution and laws it had a right to do; and with the further exception that plaintiff did, on November 7, 1930, as alleged in paragraph XXXIII of its bill of complaint, file with the said Commission a written special appearance and motion to vacate the order of October 28, 1930, and the rules and regulations therein [fol. 111] prescribed wherein it prayed for the vacation of said order and other prior proration orders affecting plaintiff at least in so far as plaintiff was concerned, and that in any event the Commission order a suspension as to plaintiff of the penalty provisions of the statute during the pendency of this suit. They admit that plaintiff's said motion was set for hearing and was heard on November 20, 1930, and that it was denied on November 21, 1930, but they allege that plaintiff failed to take any appeal from the said action of the Commission on the said motion; and allege that the plaintiff has not attempted to avail itself of the remedies provided by the laws and Constitution of the State of Oklahoma to obtain any vacation or modification of the said order or any part thereof, or any suspension or supersedeas thereof.

14. Defendants admit that the defendant Commission did not curtail the production of crude oil in the smaller fields in said state in either its order of June 30, or that of August 30, 1930, and allege that this was for the reason, among others stated in said orders, that at said times said smaller fields and each of them had an adequate market outlet for the oil produced therein, so that the full production from each of said pools could be and was being produced and taken without waste. That in making said orders and the order of October 28, 1930, said Commission classified the various oil fields in the state on the basis of the existing

relation between the potential production of each pool and the amount of the crude oil which could be produced therefrom without waste; and that because said relation was not the same in all the pools involved, the percentages of curtailment necessarily varied as between pools.

[fol. 112] 15. Defendants deny that they, acting as the Corporation Commission of Oklahoma, made, entered and promulgated said orders attached to said bill of complaint, or either of them, without having heard the testimony of any witness under oath, and without having heard and considered any sort of legal or competent or adequate evidence upon which to base said orders or either of them; and in this connection state and allege that said orders were made and entered after the hearing of testimony of witnesses under oath amply competent and adequate, and in fact overwhelming, to sustain and support the said orders and each of them, and particularly the order now in force, that is, the order of October 28, 1930. In this connection defendants further state and allege that the facts upon which said orders were predicated were so widely and generally known within the State of Oklahoma, that said Commission and the members thereof would have been justified in taking judicial notice thereof, and without evidence, to have made the orders which, upon evidence, they did make. They further state and allege that the remedy of the plaintiff for an attack upon the said orders or either of them, upon the ground that the Commission made and entered same without any legal evidence upon which to base the same, if it were true that there was no such evidence before the Commission, was by appeal to the Supreme Court of Oklahoma for review upon that ground and for reversal of the said orders upon that ground, and not by injunction as herein sought. As to the extension order of September 30, 1930, No. 5337 made in cause No. 10,146, extending said order of June 30, 1930, No. 5189 and said order of August 30, 1930, No. 5292, (made in said mentioned cause) in full force and effect until and including October 10, 1930, defendants allege that because of the pendency of the suit of C. C. Julian Oil & Royalties Company in the Oklahoma Supreme Court, and of this suit, no one applied to the Commission prior to October 1st, 1930, for a new order; and that, while it is true no witnesses were sworn and testimony [fol. 113] received on September 30th, 1930, yet an appli-

cation was filed with said Commission for the making of said extension order, and said Commission and the members thereof had knowledge that in general the facts and conditions which existed and by reason of which said orders originally issued had not substantially changed, from records made and kept by the umpires and from other sources, and that an extension order was necessary in order to prevent waste after September 30th, and until another hearing could be conducted as the basis for a new order, and said extension order was made pursuant to authority so to do reserved in said extended orders. In this connection they allege that on October 10th, 1930, while the hearing was in progress upon the petition for a new order which resulted in the order of October 28, 1930, the Commission further extended said orders of June 30, 1930, as modified by said order of August 30, until the further order of the Commission, and that same remained in force until the entry of the order of October 28, and this was done for the same reasons and by virtue of the same authority.

16. They admit that in the order of June 30, 1930, shown by Exhibit "A" attached to plaintiff's bill of complaint, Ray M. Collins was appointed by said Commission as its umpire and was authorized to employ assistants to aid him in administering said rules and regulations, and that said Ray M. Collins is now and has been for many months prior hereto, the umpire of the defendants, purporting to act, and they allege that he has been so acting, as the agent and representative of said Commission, but they deny that said Collins is not now and never has been a legal agent of said Commission and that he is not now and never has been an officer of the State of Oklahoma with authority to act in respect to the matters covered by the said act approved February 11, 1915, or the rules and regulations made thereunder by said Commission. They admit that in the order of October 28, 1930, No. 5369, the defendants again appointed Ray M. Collins as umpire and agent of the Commission to enforce the rules and regulations therein made, and authorized him to employ as many assistants as he [fol. 114] should deem necessary, and in this connection they allege that the appointment as aforesaid, of said Collins as such umpire was made with the consent of the Governor of the State of Oklahoma, as authorized by the provisions of Section 5 of the said Conservation Act. They

deny that said Collins at any of said times was the paid employee and representative of numerous persons, firms and corporations producing oil in the various fields of Oklahoma, and engaged in the manufacture of refined products and marketing the same in competition with complainant. They admit that said Collins for his services in acting as said agent and umpire of the Commission, is now and has been receiving a monthly salary at the rate of $2000.00 per month, but deny (subject to the explanation hereinafter made) that he has been receiving the same from various firms, persons and corporations engaged in the production of crude oil in Oklahoma, and the refining of crude oil in competition with complainant, and admit that said Collins has never been paid nor promised by the State of Oklahoma or any political subdivision thereof, any compensation for his services as umpire and agent of said Commission, and in this connection they allege that the compensation paid to said Collins for his services as agent and umpire of said Commission as above admitted, has not been and is not being paid by any individual or faction, but that the manner of its payment was and is as follows, to-wit: There being no public funds available out of which the said Commission could or can pay said compensation, said Collins has received his compensation out of a common fund created by proportional assessments voluntarily made by consent of practically all producers interested, and levied on practically all the oil producers interested in the oil fields in which said Collins has served and is serving: They admit that said Collins has at all times acted in conjunction with a so called Operators' Committee, composed of various individuals producing oil in Oklahoma, and representatives of firms and corporations producing crude oil in Oklahoma fields, but are without knowledge that the firms or corporations with which they are associated are manufacturing [fol. 115] the refined products from crude oil and marketing the same in competition with plaintiff, and they deny that said Collins has at all times or at any time acted in the service of said so called Operators' Committee and/or said representatives of firms and corporations. In this connection they allege that said Collins has acted solely in the service of said Commission and that in each oil field placed under proration by the said orders, a so called Operators'

Committee, composed of producers in said fields respectively, were selected and appointed by said Commission, and that such Operators' Committees were merely advisory committees, the members of which served without compensation. On November 3, 1930, said Commission issued its order as shown by journal entry 1822, appointing said umpires and Operators' Committee as agents of the Commission to enforce said orders and the Governor of Oklahoma consented thereto in writing, all as shown by a copy of said journal entry hereto attached, marked Exhibit "11" and made a part hereof.

17. Defendants state that the orders of the Corporation Commission complained of are exceedingly difficult of enforcement not because of any uncertainty in the rules and regulations of the Corporation Commission to prevent waste, but because of the peculiarly technical and complex nature of the business of producing oil. That, accordingly, to enforce said regulations against waste, it became necessary to obtain and utilize the advice of practical oil men; that, accordingly, in addition to the services of said umpire, in respect of each district brought under restraint, under the orders of the Corporation Commission, an Operators' Committee, entirely familiar with the peculiar producing conditions of the particular pool was thought by the Commission and has been found to be helpful as an adviser to the Umpire in enforcing the prescribed and definite rules of proration laid down by the Corporation Commission. [fol. 116] That it was because of these circumstances that an advisory committee of operators interested in each pool put under proration was provided for in the orders of the Corporation Commission complained of. And, although the function performed by them was to advise with the umpire regarding the enforcement of the specific rules and regulations of the Corporation Commission, by virtue of their appointment by the Corporation Commission, consented to by the Governor, they became the agents of the Commission, within the terms of said Conservation Act. That the function of the umpire was to enforce the specific rules of the Corporation Commission complained of in plaintiff's bill involving vast detail and a technical and practical knowledge, so that each operator, including the plaintiff, in a particular pool brought under restraint should be subject to an equal and equitable restraint in

comparison with that imposed upon all the other operators in the pool. They allege that plaintiff has never at any time complained to the defendants or any of them that any member of any of the Operators' Committees was not fitted for his position or has acted unfairly or impartially; nor has plaintiff sought any change in the personnel of any of said committees.

18. They admit that the Commission's said Order No. 5189 made on June 30, 1930, contains the provision copied in paragraph XIX of said bill, and that said Order No. 5369 made on October 28, 1930, contains the provision copied in said paragraph XIX of said bill; but defendants state that said provision in the order of June 30, 1930, as quoted in said bill is preceded by the following language:

"Where percentage proration is applied a gauge of producing wells shall be taken by the Umpire or under his supervision in the following manner:"

and the provision in the order of October 28, 1930, is preceded by the following language:

"Where percentage proration is applied a gauge of producing wells shall be taken in the following manner:"

and is followed by the following language:

[fol. 117] "During the time this Order is in force a similar gauge of each property shall be taken from time to time as the Umpire and Operators' Committee may designate but not less than once each month, except that in the entire Greater Seminole area, aside from South Earlsboro, East Earlsboro, East Little River, Sasakwa, Konawa, West Asher-Wanette, Earlsboro Townsite and Wilcox wells in Allen pools, and in the 'Class A' pools, the gauge may, upon direction of the Umpire, be determined by applying the proper decline curve for each lease so gauged."

19. They deny that the oil wells in the Oklahoma City field have never been gauged by the said Commission or by any competent and legally qualified agent of said Commission or legal and qualified officer of the State of Oklahoma, and deny that the Commission's findings of the potential production in the Oklahoma City field set forth in

the various orders, were not based upon any gauge of the wells in said field, and that the Commission's findings of the potential production in the Seminole field and other fields set forth in said orders, were not based upon any gauge of the wells in the said fields respectively, and that no legal and lawful gauge as provided by the Oklahoma Statutes, has ever been made by said Commission or under any valid rules prescribed by it, and allege that neither Section 7958, Compiled Oklahoma Statutes, 1921, nor any other provision of the law, requires that said wells be gauged by officers of the State of Oklahoma or agents employed or appointed by said Commission, with the consent of the Governor, but only that they may be gauged under rules and regulations to be prescribed by said Commission, and they state that rules and regulations for gauging all wells operated on a percentage basis were prescribed and incorporated in said orders, and that all wells so operated were gauged by or under the direction of the Umpire in accordance with said rules and regulations. They state that in practice there are two methods whereby the wells in a given field may be operated to accomplish the taking from his well or wells, by each producer, of only that proportionate part of all the oil that may be produced from such field without waste as the production of the well or wells of such producer bears to the total potential pro- [fol. 118] duction of such field, one being the so-called "percentage basis" and the other the so-called "time basis." By the percentage basis of proration, each well owner, by the application of back pressure on each of his wells, while operating same continuously, restricts the flow of oil therefrom so that in the prescribed period of time, it produces its proportionate part of the allowable production from the field; and by the time method the wells are grouped into classes and the owners of one group of wells operate their wells to full capacity for a fixed short period of time while all other wells in the field are shut in, then the wells of another class are so produced, and so on, with the result that each well is on full production for a fixed short time and is then entirely closed until its turn again so to produce is reached; and they state that the wells in all fields affected by said orders except the Oklahoma City field have been operated on a percentage

basis; and that the Oklahoma City field has been operated on a time basis, and that the potential capacities of the wells in said Oklahoma City field have been determined by ascertainment by the umpire, from day to day as said wells were on production, of the amounts produced by said wells, respectively, when on production from time to time.

20. They deny that various persons, firms and corporations owning and operating oil wells in the Oklahoma City field, the Greater Seminole field and some of the other fields, organized what is known and referred to in the Commission's rules, regulations and orders complained of by complainant as an "Operators' Committee" and state that several Operators' Committees for the several prorated fields covered by said orders, were suggested by said Ray M. Collins, Umpire, approved at meetings of producers duly called, at which all the producers in said fields respectively, were notified and given an opportunity to be present, and that their appointment by the said Commission (with the consent of the Governor) was an exercise of the independent judgment of said Commission.
[fol. 119] They deny the import of the allegations of paragraph XXI of plaintiff's bill of complaint relating to the appointment and function of an Operators' Committee, to the effect that there is one Operators' Committee for all the prorated fields, and allege that there is a separate Operators' Committee for each prorated area.

21. They deny that the Operators' Committee (for the Oklahoma City field) procured the Commission to name one of their employees, Otto B. Bradford, as the so called umpire for the Oklahoma City field, and state that said Bradford is not and has never been an employee of any member of said Committee, and allege that said Bradford was nominated as assistant umpire and assigned to said field by Umpire Ray M. Collins, and his employment and appointment were made by said Commission with the consent of the governor of said state. They deny that said Bradford acts under the direction of the Operators' Committee for said Oklahoma City field and allege that he acts under the direction of Ray M. Collins, umpire for the state as a whole, and said Commission. They admit that it was the business of said Bradford as said umpire, to see that the producers of oil in the Oklahoma City field keep their

wells closed down uder what is known as a time proration basis (a method hereinbefore explained), but deny that it is his business to see that production is allowed in said field upon an unfounded and unwarranted estimation of the potential production of said field, and deny that no gauge was ever made of wells in said field as required by the statute. In this connection they allege that by order of said Commission, entered originally in 1929 at the request of all the then producers in said field, and continued in force from time to time since then, at the request of a majority of the operators therein, the Oklahoma City field has been operated upon the time proration basis. They aver that the plaintiff has never protested to defendants against said [fol. 120] method of operating said field or complained to defendant that the potential production as ascertained by the Commission or the Umpire was not correct, and they allege that they are informed and believe and therefore allege that at a recent meeting of the Oklahoma City field producers, a vote was taken on a motion to recommend to the Commission that it order said field to be thereafter operated on a percentage basis, and that a duly authorized representative of plaintiff who was present, voted against making the change. They further allege that the present time basis order applicable to said field was made and entered after a full hearing at which many witnesses testified and that same is amply supported by testimony. They say that at the meeting last above mentioned, the Oklahoma City field operators by a majority vote adopted a resolution recommending to the Commission that said field be operated upon the percentage basis, and they say that application for such change is now pending before said Commission and that several hearings thereon have been conducted and said Commission has same under advisement. They admit that Otto B. Bradford has never received nor been promised any compensation by said state or any authorized agent or political subdivision thereof, for his services as Umpire. They deny that said Bradford has been receiving compensation from said Operators' Committee for his services, and deny that all or any of his acts or deeds have been illegal and unauthorized by any valid rule and regulation of the Commission or by the provisions of any statute of said state, and they allege there being no public funds available out of which the Corporation Com-

mission could pay said Bradford for his services, he has received his compensation out of a common fund created by proportional assessments voluntarily made by consent of and levied upon practically all producers in said field.

22. Answering the allegations of paragraph XXII of said bill of complaint, these defendants allege that the plan set forth in said orders for gauging the wells affected by said orders, is a practical and workable plan, designed to accomplish fair, true and equitable gauges of said wells, and [fol. 121] same was and is authorized by the provisions of said Conservation Act, and that the complainant has not at any time made objection before the defendant Corporation Commission that the said plan is not fair and practical, or that it does not accomplish a true and correct gauge of the wells, and has never sought any modification by said Commission of the said orders or any of them in this regard, and they deny that the said rules, regulations and orders of the Commission are each and all, or any of them, void, in that in not providing for notice of the taking of gauges of wells, except as provided in said orders, they deny the plaintiff due process of law or the equal protection of the laws guaranteed to plaintiff by the Fourteenth Amendment; and they further aver that the matter, method and manner of gauging said wells in order to determine the potential production thereof, is an administrative and ministerial function.

23. Answering the allegations of paragraph XXIII of said bill of complaint, defendants state that the reason no operator in the Oklahoma City field has stored crude oil in earthen tankage or permitted it to run at large on the surface of the earth (except in the case of a few wells that, by reason of the extremely high pressure in the underground oil and gas reservoir, became uncontrollable and ran wild for several days) is because of the existence and enforcement of the proration orders herein complained of, and the orders which preceded them, and they aver if the said orders had not been made and plaintiff had been heretofore permitted to produce its wells to capacity or substantially to capacity, then plaintiff would have drained a large part of the oil from under the lands of its neighbors and additionally wold have caused underground waste of oil, or, its neighbors, in an effort to protect themselves, would have

produced and wasted immense quantities of their own oil in earthen storage and otherwise.

24. Defendants state with reference to the sections of said Conservation Act which are involved herein, that is to [fol. 122] say, all the sections thereof except Section 2, being 7955 C. O. S. 1921, (as to the validity of which excepted section the defendants make no allegation for that the Commission has not acted thereunder in the orders herein involved,) that they are not invalid under the Fourteenth Amendment to the Constitution of the United States for that oil and gas are irreplaceable natural resources of the State and while in the ground possess the power of self-transmission from place to place, and First, the Legislature of Oklahoma, acting under the police power, had and has authority to regulate and restrict the use and enjoyment by landowners within the said state of the natural resources of the state, including oil and gas, so as to protect said resources from waste; and, Second, said Legislature under the police power was possessed with authority to regulate and restrict the use and enjoyment by landowners within said state of the oil and gas in and under their lands so as to prevent the infringement by any of such landowners of the rights of others to extract and reduce to possession their respective fair and equitable proportionate parts of the oil and gas in the reservoirs beneath the lands of all; and, Third, said Legislature possessed the power to reach the end of so protecting the said rights of the several land owners in a common source of supply of oil and gas by legislation designed to prevent waste.

Defendants aver that in the enactment of said Act approved February 11, 1915, the Legislature of Oklahoma was dealing not only with a natural irreplaceable resource, but also with a peculiar species of property of vast importance and consequence to the State of Oklahoma as a proprietor and to the economic welfare of the people of said state. Defendants aver that oil and gas under ground possess characteristics not shared by other species of property. That the typical oil reservoir in the state of Oklahoma and in the other American states, including the Oklahoma City oil pool, the Greater Seminole oil area and the other fields in respect of which complainant complains, is characterized by the following conditions:

[fol. 123] (1) Oil and gas exist in the ground in sedimentary rocks, being a porous, sandy strata, or in lime formations, varying in texture and porosity, and these are called oil pools.

(2) They exist in their undisturbed state under pressure, often quite high.

(3) In said pools both oil and natural gas will be encountered as the occupants of the same reservoir.

(4) There will be a quantity of free gas inhabiting the higher portions of the saturated formation, such gas being almost entirely, if not completely disassociated from the oil content of said formation, but exerting a pressure throughout the same.

(5) In addition to said free gas large quantities of natural gas will be found in the reservoir dissolved in the oil contined therein which association between the oil and gas reduces the viscosity of the oil and otherwise tends to increase its mobility so that when the reservoir is penetrated by a well the propensity of the oil to migrate to the opening thus created and to be lifted to the surface is vastly augmented, and as a result of this physical condition oil may be drained from the lands of one oil operator through the well or wells of another operator penetrating the common reservoir.

(6) Furthermore, upon the penetration of the reservoir by a well the free gas at the top of the structure functions in such way as to drain the oil originally inhabiting one tract of land to the tract penetrated by the well.

(7) The free gas at the top of an oil structure and the gas dissolved in the oil therein constitute what in the oil industry is defined as the "gas energy" of the particular pool, and the gas energy of an oil pool is the chief agency in moving petroleum laterally to a well penetrating the reservoir, and also in lifting it to the surface for recovery for commercial purposes.

(8) Until such time as the pressure called "gas pressure" in the reservoir is dissipated through wells drilled into the reservoir, the oil and gas flow through the wells,

when opened; thereafter the oil is usually extracted by pumping.

[fol.124] That the characteristics of oil and gas hereinbefore mentioned apply to all the oil properties described in plaintiff's bill, and the pools wherein they are situated. That these characteristics establish a community interest in the gas energy or pressure of an oil pool between and among all of the proprietors having rightful access to the particular reservoir, by reason of the fact that should one oil operator therein wastefully or inefficiently or disproportionately use said gas energy or pressure to produce his oil, such use to the extent of such waste or that it is improper, deprives the other oil operators in said pool of the right to recover the quantity of oil from their lands which they might recover if there were no such waste of gas energy or pressure or no inefficient or disproportionate use of the same. Accordingly, by the nature of the subject matter dealt with correlative rights and obligations apply to an oil and gas pool. No operator therein may disproportionately use the gas pressure or energy of the pool so as to take from the pool a disproportionate part of the oil content thereof, without at the time, and by so doing, seriously injuring the co-equal right of other surface proprietors to use said energy and extract the oil, and at the same time produce underground waste. As has been alleged, at the time of the making of the orders herein complained of, and at the time of the filing of this suit and at all times since then and now, the potential production of the Oklahoma City pool and each of the other pools where plaintiff's wells are located, greatly exceeded and exceeds the reasonable market demand for oil therein, as is shown on the face of said orders. The facts [fol. 125] last alleged demonstrate that it is not possible to market all of the oil production from either of said areas. Complainant states that it is in position to take all of its production, both from the Oklahoma City pool and from the Greater Seminole area and the other fields where it has wells, but defendants aver that all of the oil operators therein are not only unable to market all of their production therefrom, but only a part thereof, and in the Oklahoma City pool a very small part thereof, and that if complainant shall be permitted to take all of its

production from said pools, such action on its part would destroy the community nature of the gas energy in each of said pools, and in so doing, the complainant will be able to produce more than its proportionate share of the production from said pools to the destruction of the property rights of the other operators in said pools, and will cause waste; if the complainant shall be permitted to do one of the things designed to be prevented by the statute recited in complainant's bill, that is to say, instead of submitting to a proportional taking of oil from each of said pools, each operator thereby being permitted to produce such proportion of the market outlet of the pool as his potential production bears to the potential production of the pool, complainant would be permitted to produce all of its oil to the irreparable detriment of the other operators in each of said pools, by draining the oil from their properties and causing them to commit waste by flowing their oil into open earthen storage because of inadequate market outlets for their oil. The said statute was designed to prevent both the evil of commission of waste and the evil of disproportionate taking on the part of several operators in a common pool when the full production therein cannot be had without waste, and thus to prevent the consequences above enumerated growing out of permitting the complainant herein to produce without restraint the oil from its wells in the said pools where there is a grossly inadequate market outlet.

Defendants aver that the said Act was adopted by the Legislature of Oklahoma in order not only to prevent the waste of crude oil under ordinary circumstances, but also to prevent its waste incident to the production of crude oil [fol. 126] in excess of transportation and marketing facilities or reasonable market demands, and defendants aver that as is above explained, actual waste of crude oil occurs as an incident to the production of crude oil in excess of transportation or marketing facilities or reasonable market demands, and that additionally, and as an incident to the prevention of waste under the said circumstances, said statute had as one of its purposes the protection of the coequal rights of the several land owners in a common source of supply of crude oil against the taking by anyone thereof of an unfair and disproportionate part of the oil content in such common source of supply. In this connection de-

fendants allege that prior to the enactment of said statute and its approval on February 11, 1915, as at all times since its enactment, there were and have been three classes of oil operators in the State of Oklahoma, namely: First, the completely integrated unit which produced, transported, and refined petroleum and marketed the products thereof; Secondly, the quasi-integrated unit which produced, transported and marketed crude petroleum; Thirdly, the non-integrated unit which engaged in the sole business of producing oil. Defendants aver that in the years 1905, 1906 and 1907, the Glen Pool in Oklahoma was under active ex- [fol. 127] ploitation, and that the three classes of oil operators held producing leases therein; that the integrated and quasi-integrated units produced all the oil that they could produce from their properties, and that a non-integrated oil operator owning production alone and having no actual market for all his output was totally unable to produce all his potential production from said pool. In consequence, by virtue of the nature of the substances involved, the integrated and quasi-integrated units in the oil producing business used more of the gas energy and pressure of the pool than they were entitled to; that an integrated or quasi-integrated oil producer was able to take from his leases all the production therefrom when his neighbor or neighbors, non-integrated producers, were not able to market any oil therefrom, or to market a production therefrom bearing any equitable relation to the quantity taken by said integrated or quasi-integrated producers. That the oil industry of the State of Oklahoma passed through the same experience in the Cushing field in Oklahoma between 1913 and 1915; and in the Healdton field the condition existed of an integrated or quasi-integrated oil producer being able to produce and market all of his production from a particular oil pool, although at the time an adjacent operator or another operator in the same pool was not able to market any or at the most an inappreciable quantity of the production of his wells. As a result, the integrated or quasi-integrated operators of the state were utilizing a community property, namely, the gas pressure energy of the pools in which they were interested, to the fullest possible extent and to the overwhelming detriment of the non-integrated operators in the pool, who, by reason of the action of the integrated producer, were compelled to either submit to drainage or run

their oil into earthen storage where it evaporated and wasted. And defendants aver that to meet this evil and to establish equality of production during periods of oversupply, and otherwise to prevent waste, the Act effective February 11, 1915 was enacted.

Defendants aver that petroleum is an irrenewable and irreplaceable natural resource, and that when the oil resources of the State of Oklahoma are exhausted they cannot [fol. 128] be replenished by any human agency. Defendants aver that notwithstanding a condition of acute overproduction in the American petroleum industry at the time of the enactment of said Conservation Statute, the discovery of new petroleum resources was entirely a fortuitous circumstance; that new petroleum supplies in the state might or might not be discovered, and that the science of finding oil had not yet so advanced as to determine whether there would be an over- or under-supply of petroleum. That in consequence of the irreplaceable character of petroleum it was within the province of the state to safeguard the supply of petroleum therein so as to continue as long as possible the economic prosperity of the state as a producer of petroleum. That, in addition, the petroleum industry at that time was the second among the productive enterprises of the state, not only in the value of its products, but in the employment of men engaged in said business. That, accordingly, the predicament of the petroleum industry in said state entered largely into the general welfare and prosperity of the citizens of said state, not only through the direct employment of thousands of employees, but by their contribution to the general welfare and prosperity of the state. That, in addition, the State of Oklahoma itself owned vast tracts of land which were favorable for the production of petroleum which would add to the revenues of the state and therefore contribute to the general welfare of the citizens thereof. That it was by reason of these things, community nature of the gas pressure or energy of an oil pool, the general welfare of the people of the state of Oklahoma and the situation of the state in its proprietary capacity, that the Act effective February 11, 1915, was enacted. During periods of overproduction in the petroleum industry of said state, that Act denies to any oil operator in a pool where the market outlet does not equal the full production, the right to take all of the oil production from his

properties that they are capable of producing, and yields to them the right only to produce from their properties the same proportion of their production that the other operators in the particular pool may produce in meeting the total reasonable market demand. Defendants aver that [fol. 129] said statute provides for proportional taking, and was designed to enforce proportional taking because of the community interest in the gas energy or pressure of an oil pool, and because of the general public welfare in respect of an irrenewable and irreplaceable natural resource of vast consequence to the economic future of the state.

The complainant asserts privileges which said statute was directly designed to prevent, and which, under its police power, the state has the right to prevent. The complainant is an integrated oil producer; owns its production; owns transportation facilities from its production to its refinery, owns its refinery, and distributes and sells its own refinery products. If the complainant shall be entitled to produce all of its production in the Greater Seminole area and the said other pools, it shall obtain a disproportionate part of the gas energy which is the chief agency in the production of oil and of the oil, to the serious detriment of the other producers in said pool who are in position only to market a part of their production. The complainant by its bill seeks to deprive the other oil operators in said fields of their just share of the gas energy and oil, which between the complainant and the other operators in said pools are subjects of common property interest. Accordingly, complainant's bill, instead of having as its object the protection of a property right, has as its object the invasion of the property rights of the other owners of oil properties in said pools. Accordingly, defendants deny that the orders of defendants described by complainant are void and unenforceable for the reason that the execution of the same is in violation of the complainant's constitutional rights under the due process or any other clause of the Constitution, either State or Federal.

25. Answering the allegations of paragraph XXIV of said bill, defendants deny that the rules, regulations and orders complained of are arbitrary and discriminatory in any respect alleged by plaintiff; they allege that under said order of October 28, 1930, no wells within the state are allowed to produce to 100% capacity save only when the

[fol. 130] wells on any single lease average in daily production five barrels or less; and they further state that each oil field in said state is by said last mentioned order limited to the production of an amount of oil equal to the reasonable market demand for oil in such field, and each producer therein is restricted to the production of his proportionate amount of the oil allowed to be produced in said field, determined in the form and manner prescribed by said conservation act. They deny that plaintiff has been required and compelled by the defendants to entirely shut in its wells in the Oklahoma City field, but they allege that plaintiff has been only required to shut in its wells in said field intermittently in conformity to the time proration plan set up for proportional production by each and every operator in said field. They are without knowledge that plaintiff can produce oil from its wells for a less cost than the price it is now and will be compelled to pay for crude oil from other producers on the open market, but say that, if it can do so the fact is an immaterial one. They deny that said rules, regulations and orders even if it be true that plaintiff is compelled to purchase oil from others and to do so at a loss over what it would be able to do of it produced and refined its own oil—deny to plaintiff due process of law and the protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States; and in this connection state that plaintiff is subject to reasonable police regulations, such as is prescribed by the said conservation act and the said orders of the Commission made pursuant thereto, whether or not in obeying same plaintiff may suffer some loss which it would not otherwise be subjected to. They are without knowledge that under present conditions and conditions existing for several months prior hereto plaintiff has been compelled to run its refinery at a loss, and are without knowledge that if plaintiff were allowed to produce and refine its own production in Oklahoma without restriction, it could run its refinery at a profit or at least [fol. 131] without a loss, and say that if those things be true they are immaterial facts. They deny that said rules, regulations and orders have the effect of confiscating the property of the plaintiff and that they are for that reason unconstitutional and void; and they deny that they are in contravention of Section 2 of Article 2 of the Constitution of Oklahoma, copied in paragraph XXIV of said bill, for

the reason there stated or any other reason; and in this connection state that the Oklahoma Supreme Court, in the C. C. Julian Oil & Royalties Company case, held that they are not in contravention of said provisions of the Oklahoma Constitution.

26. They deny the allegations of paragraph XXV of said bill relating to the provision of said orders dealing with purchasers and carriers of oil.

27. They deny that many large oil corporations, firms and individuals selfishly interested in maintaining high prices for crude oil, or otherwise influenced, formed by an agreement among themselves what is known as an "Operators' Committee", in the rules and regulations of said Commission, and that said corporations, firms and individuals, or any thereof, through Ray M. Collins, or otherwise, formulated the so-called proration orders herein complained of, and in this connection state that the said orders are the independent acts and represent the good faith judgments of the said Corporation Commission. They deny that said oil companies, or any of them, entered into an agreement, combination and confederation among themselves to limit the natural output in the oil fields in Oklahoma and the United States, and thereby restrict production for the purpose of controlling the price of crude oil and its refined products and eliminating thereby the plaintiff and others in plaintiff's class as competitors, and in this connection allege that said orders, rules and regulations were made and entered by said Commissioners and said Commission in good faith and as their own independent act and judgment in compliance with their duties and the obligations imposed upon them in and by said conservation [fol. 132] act and in order to prevent the waste of crude oil and to protect the co-equal and correlative rights of the several producers and owners of oil wells in the several fields covered and affected by said orders; and they deny that the said orders are a violation of Section 8 of Article 1 of the Constitution of the United States.

28. With reference to the allegations of paragraph XXVII of said bill, relating to the suit of C. C. Julian Oil & Royalties Company against the defendants herein, and the decision of the Supreme Court of Oklahoma in said case, the defendants allege that in its opinion and decision in said

case the Supreme Court of Oklahoma denied the contention of the plaintiff in said suit that the said conservation act and the then existing and effective orders of the defendant Corporation Commission were invalid as being in violation of the provisions of the due process clause of the Federal Constitution and the similar clause of the Oklahoma Constitution and the other clauses of the Oklahoma Constitution which the plaintiff in this action alleges they violate; and further allege that by its appearance in said C. C. Julian Oil & Royalties Company case, as alleged in said paragraph XXVII of said bill, and the filing therein of the brief amicus curiæ, the decision of the said Supreme Court of Oklahoma became binding and conclusive upon the plaintiff herein, and they plead that by reason thereof the plaintiff herein is estopped to now question the validity or constitutionality of the said conservation act and/or the said orders of the Corporation Commission.

29. Answering the allegations of paragraph XXVIII of said bill, defendants deny that the said Oil Conservation Act and the separate sections thereof (other than Section 2 thereof, as to which these defendants make neither allegation nor contention inasmuch as they have not in any of the orders here involved attempted to act under said Section 2), are unconstitutional and void for any of the reasons stated in said paragraph.

30. Answering the allegations of paragraph XXIX of said bill, defendants deny that said conservation act is void in that it violates Section 1, Article 4 of the Oklahoma Constitution.

[fol. 133] 31. They deny that said act is void in that it violates Section 1 of Article 5 of the Oklahoma Constitution, as alleged in paragraph XXX of said bill.

32. They deny that said rules, regulations and orders are void in that they were made and are maintained with threats of their enforcement in excess of the defendant Commission's authority and powers, or in that they undertake to regulate, control and unreasonably hamper plaintiff's business of refining oil and marketing the products therefrom.

33. Answering paragraph XXXII of plaintiff's bill, defendants deny that they, as the Corporation Commission of the State of Oklahoma, are threatening to continue to make

and enforce from time to time for an indefinite period its present rules, regulations and orders, thereby depriving plaintiff of its rights guaranteed by the Fourteenth Amendment to the Constitution of the United States or that the defendants intend to and will make said rules, regulations and orders for a brief period of time and then shortly before the expiration thereof continue them all for the purpose of preventing this plaintiff from presenting to this court and to the Supreme Court of the United States the issue of the validity of said rules, regulations and orders and their constitutionality and the constitutionality of the Oklahoma Oil Conservation Act, and that this course of conduct has been maintained by defendants from month to month from June 30, 1930, and will hereafter be continued from month to month or for brief periods for the purpose of coercing this plaintiff and others similarly situated into an acceptance and acquiescence in their orders, rules and regulations and with the hope that this suit, or any other action commenced in the Federal Court, will become moot before a trial and decision can be had.

Defendants state that the Corporation Commission of the State of Oklahoma began establishing the present series of orders, rules and regulations to prevent waste of petroleum in the State of Oklahoma in the year 1926 under the pro- [fol. 134] visions of said Conservation Act and admit that such rules and regulations were established for comparatively brief periods of time; that this was necessary because the type of waste considered by the Commission in each instance consisted of the production of petroleum in the State of Oklahoma in excess of the reasonable market demand, although in the establishment of all such rules and regulations other types of waste incident to and caused by the production of oil in said state over the reasonable market demand were also considered and by the orders of the Corporation Commission all such types of waste were prevented. Defendants state that continuously since then, as will always be the case, they were dealing with a peculiar subject matter; that the extent of the state's production of crude oil over a considerable period in the future could never be exactly determined, and that such determination could be made only for a brief period in the future; that at the same time the demand for crude petroleum in the state at large or in any particular pool could not be accurately determined for any considerable period in the future. In

other words, defendants allege that both production and demand, as contemplated by the Conservation Act, had to be determined for brief periods of time; that as a rule said rules and regulations were established for a three months' period and even then with a regulation to the effect that production might be increased or decreased during the three months' period by supplemental order of the Corporation Commission after hearing, depending upon the extent of the reasonable market demand; that the orders complained of were made under the conditions hereinbefore alleged in pursuance of the Conservation Act and not for the purpose alleged by plaintiff. Defendants further aver that whether or not they shall make any further orders of the character complained of by the plaintiff will depend entirely upon the character of the petition, if any, that may be filed for further regulations to prevent the waste of oil, and upon due proof of the allegations of such petition before the Commission after notice of a hearing therefor given in pursuance of said Conservation Act; or, [fol. 135] if no such petition be filed, whether defendants find from conditions in the oil fields in the state that they should nevertheless conduct a hearing for such an order.

34. They admit that plaintiff has produced oil from its Oklahoma City field wells in violation of said orders, rules and regulations and that plaintiff has been cited to appear before said Commission to show cause why it should not be punished for contempt, but they deny that the defendants or any of them have threatened to visit any other penalty upon plaintiff by reason of said violation, for that, under the said act and the laws of Oklahoma, the said Commission possesses only the power to punish for contempt a violation of its orders, rules and regulations. They deny that the penalties prescribed by the Oklahoma Statutes for violation of orders of the said Commission are excessive and unreasonable, and deny that they are imposed by the statutes for the purpose of deterring anyone injured or affected by the orders of said Commission from contesting their validity or correctness in any judicial forum, and deny that the penalties prescribed by said statutes for violation of the orders of the Commission beset judicial review with such deterrents as to deny the plaintiff due process of law; deny that said penalties are so far confiscatory as to operate, or that they were intended

by the Legislature to operate so as to coerce plaintiff or any other person, firm or corporation into acquiescence therewith, and thereby forego and surrender the right to have said orders reviewed by the courts; and deny that plaintiff is entitled to an injunction restraining the enforcement of the said penalties; and deny that the defendants are threatening a receivership for the plaintiff's properties, for that under the said statute the defendants are not authorized to seek any such receivership—authority to do so being vested only in the Attorney General or any county attorney. Defendants state that the said penalties are not enormous or severe when the amount thereof is compared to the value of the oil which may be produced from the wells of plaintiff if said wells should be operated [fol. 136] in violation of said orders.

Defendants state that if the plaintiff be deterred from violating the said orders pendente lite by fear of the imposition of said penalties, it will not hereby suffer any injury whatsoever in the loss of any recoverable oil from the lands covered by its leases, and this for the reason that the owners of wells on lands adjoining and in the vicinity of plaintiff's wells are observing said orders and are not producing from the wells on their lands a greater proportionate part of the content of the reservoir than their respective ratable shares thereof as fixed by said orders, and are not draining oil from plaintiff's lands. They further allege that the loss to plaintiff by having to pay fines imposed by defendants under the penalty provisions of said statutes for violations of the said orders during the pendency of this suit, would not be comparable to the much greater losses which would be sustained by the owners of oil wells upon lands adjacent to and in the vicinity of plaintiff's wells due to drainage which would occur from their lands into plaintiff's wells if operated to the extent which plaintiff alleges in its bill of complaint it desires to operate them; and in this connection they allege that the owners of wells in the neighborhood of plaintiff's wells are operating same in obedience to the said proration orders.

They further allege that the laws of said state provide safe and adequate remedies for testing the validity of said orders, as hereinafter particularly stated.

[fol. 137] 35. They admit that plaintiff filed on November 7, 1930, with the defendant Corporation Commission, its written special appearance and motion to vacate the rules, regulations and orders herein complained of and that in said motion it set forth matters as alleged in paragraph XXXIII of said bill, except that they deny that it set forth therein substantially all the facts and allegations contained in said bill; they admit that said motion contained the prayer as copied in said paragraph XXXIII of said bill, and admit that said motion was heard by said Commission on November 20, 1930, was opposed by certain operators, and that on November 21, 1930, said Commission denied said motion, but they allege that plaintiff took no appeal to the Supreme Court from said action of said Commission, but elected instead thereof to file an amended complaint, to which this is defendants' answer, in this suit in this court.

36. With reference to the allegations of paragraph XXXIV of said bill of complaint, defendants state that they are not sufficiently advised to now assume a position on the question of law as to whether said orders are legislative acts of said Commission or are merely ministerial acts or quasi-judicial acts, and, hence, they deny that said Commission is the only tribunal provided by the laws of said state endowed with final, or any, legislative authority in making said orders; but they state that, in any event, under the provision of Section 7 of said Oil Conservation Act (Sec. 7960, C. O. S. 1921), appellate jurisdiction is conferred upon said Supreme Court to review the action of said Commission in making any order or orders under said Act, and such appeal may be taken by any person, firm or corporation shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of said Commission; and said orders so appealed from shall not be superseded by the mere fact of such appeal being taken, but shall be and remain in full force and effect until legally suspended or set aside by said Supreme Court; and under the provisions of Sections 20, 21 and 22 of Article IX [fol. 138] of the Constitution of Oklahoma (the first of which empowers the Legislature to provide, as it did by said Section 7 of said Act, for appeals from actions of the said Commission in respect to matters other than

those relating to transportation and transmission companies), the Supreme Court of said state has jurisdiction to review, reverse, correct or annul any action of the Commission and, pendente lite, to suspend or delay the execution or operation thereof on appeal to it, the review to be upon the record made before the said Commission, including a consideration of the evidence introduced before said Commission and the reasons assigned by the Commission for the making of its order, rule or regulation so appealed from, and said Supreme Court has jurisdiction to consider and determine the reasonableness and justness of the action of the Commission appealed from, as well as any other matter arising upon such appeal, and may, before the appeal is finally decided, require the Commission to take further and additional evidence to be certified to said court, the only limitation upon said court being that it shall regard the action of the Commission appealed from as prima facie just, reasonable and correct, meaning, as interpreted by the Supreme Court of said state, only that the burden rests upon the party appealing to show that such order is not just, reasonable or correct and not that the order must be sustained if there is any competent evidence introduced before the Commission supporting it. On any such appeal said Supreme Court is empowered to review and weigh the evidence, and decide all questions of law and fact. Therefore, the state law provides a fair opportunity for submitting all the issues raised by the plaintiff in its bill filed herein to a judicial tribunal of said state for determination upon its own independent judgment of all of said issues both of law and fact; and said remedy is substantial, adequate and safely available to plaintiff, and hence provides for plaintiff due process of law.

[fol. 139] Wherefore defendants pray that said Second Supplemental Bill of Complaint and this suit be dismisesd at plaintiff's cost.

J. Berry King, Attorney General of the State of Oklahoma.

[fol. 140] *Duly sworn to by C. C. Childers and E. R. Hughes. Jurat omitted in printing.*

(Here follows Exhibit No. 1, side folio 141.)

[fol. 142] [File endorsement omitted.]

FOLD-OUT IS TOO LARGE TO BE FILMED

[fol. 143] IN UNITED STATES DISTRICT COURT

STIPULATION AS TO EVIDENCE, ETC.—Filed Jan. 2, 1931

Comes now the plaintiff by its attorneys represented by H. G. McKeever, and the defendants by their attorneys represented by W. L. Murphy, and stipulate as follows:

That all of the affidavits heretofore used by either party in the former hearing in this cause in the Federal Court before the three Judges on the 29th day of September, 1930, may be filed, used and considered herein for the hearing to be had upon January 2, 1931.

That without affidavits attached for further identification either party may offer in evidence such records as the attorneys on either side desire from the office of Otto Bradford, Umpire for the Oklahoma City, Oklahoma, oil field or pool, or such certified copies therefrom as may be certified by the said Otto Bradford as such umpire.

It is further stipulated that a certified copy of any records from the office of the Corporation Commission may [fol. 144] be used and offered in evidence by either party without further identification or authentication.

It is further agreed that the orders of the Corporation Commission attached to and made a part of plaintiff's Second Amended and Supplemental Bill of Complaint are true and correct copies of the orders of said Corporation Commission and will be accepted as such and considered in evidence through said pleadings without further offer being made of the originals and it is further agreed that the orders of the Corporation Commission since the filing of said Second Amended and Supplemental Bill and up to the date of hearing on January 2, 1931, may be attached to and made a part of the amended and supplemental bill of complaint of plaintiff's without prejudice to the hearing on said 2nd day of January, 1931, and such orders may be included in the consideration of the court on said date.

It is further stipulated that the defendant, Corporation Commission, will on the day of hearing said cause on the 2nd day of January, 1931, present for examination by the plaintiff in open court, if plaintiff desires and the court so permits, the Umpires Ray Collins and Otto Bradford, and

that it will be unnecessary for plaintiff to procure the affidavits of said umpires or to subpœna them.

Dated this the 27th day of December, 1930.

Horace G. McKeever, Attorney for Plaintiff. Wm. L. Murphy, Attorney for Defendants.

[File endorsement omitted.]

[fol. 145] IN UNITED STATES DISTRICT COURT

OPINION ON APPLICATION FOR TEMPORARY INJUNCTION—Filed Feb. 9, 1931

Before Cotteral, Circuit Judge, and Williams and Kennamer, District Judges

COTTERAL, Circuit Judge, delivered the opinion of the court.

On January second and third, the applications of the plaintiffs for temporary injunctions were submitted upon the evidence of the parties and the arguments of counsel. The Champlin Refining Company renewed a former application, which was denied on September 30, 1930 after a two-days' hearing ending that day. The injunctions are sought against the enforcement by the Corporation Commission of Oklahoma, its members and the Attorney General, of certain proration orders of the Commission, curtailing the production of oil in the state for limited periods. Three of the orders, No. 5189, 5292 and 5337 had expired prior to the hearing in January. By supplemental pleadings the orders in force were assailed on like grounds, as previously alleged. Order No. 5369, which was dated October 28, 1930, restricting production to percentages or barrels by classes embracing the several fields and new pools was by its terms to be in force until January first. But by order of December 30, 1930, order No. 5413 was issued, extending No. 5369 to March 31, 1931, except as modified by that order and order No. 5396, of December 4, 1930, and by order No. 5414, of December 30, 1930. These last three orders are corrective and supplemental in character. Order No. 5369 as modified now furnishes the present ground of controversy in these cases.

[fol. 146] There are non-essential details in this scheme of proration. Both the Act of the legislature which authorized it, codified as sections 7954 to 7963, C. O. S. 1921, and the orders promulgated by the Commission are assailed. Most of the questions involved were decided at the former hearing of the Champlin case. After considering the additional complaints, evidence and arguments of counsel, the views of a majority of this court remain unchanged, and they are that the applications for the injunctions should be denied, both because the Act in its restraint of actual waste and the orders made pursuant to it are deemed to constitute a valid exercise of the police power of the state and not to violate the due process or equal protection clauses of the Fourteenth Amendment to the Federal Constitution. It is conceded, however, that section 7955 is invalid. The orders may rest on the other sections of the statute.

The proration applies to each of the plaintiffs. Three of them have pipe line facilities for taking the oil to refineries they own or control and to market, without waste, and they make a special contention against curtailment of production by them. But it is not well taken. As this court ruled at the former hearing of the Champlin case:

"The plaintiff claims as a serious ground of complaint that as it can produce oil from its wells without waste and has market for its product, the statutes and orders are discriminatory and void. The cases just cited are an answer. If the proration of oil output is within the police power of the state, loss of private property interests may not be taken into account and afford no reason for striking down a law enacted for that purpose. Such loss must yield for the common good of the public sought to be advanced in the exercise of the police power of the state."

Complaint is made that the orders constitute a price fixing scheme and effect a taking of property without due process of law. If the charge were true, the orders would fail for that reason. Williams v. Standard Oil Company, [fol. 147] 278 U. S. 235. But it is not sustained. The Commission aptly refutes such purpose and points out the decline in the price of oil since the proration has been in force.

The orders are said to be invalid, because of the varying rates of curtailment in the several fields. But the market demand and pipe line facilities differ and justify the orders in that regard. There is no arbitrary or unreasonable discrimination, because the classification is founded on different conditions. Frost v. Corporation Commission, 278 U. S. 515. Any state of facts reasonably conceivable to sustain a classification must be assumed. Lindsley v. Carbonic Gas Co., 220 U. S. 61.

The orders are also challenged because they provide for an unfair method of gauging production and entrust enforcement to an umpire and operators' committee selected from the major oil companies and paid by them; and specific objection is made on the ground that favoritism has actually occurred. But doubtless the Commission will hear all complaints and correct any untair dealing among the oil companies. At least we regard matters of procedure in the fields as within the administrative control of the Commission, and as not invalidating the scheme of proration.

At the last hearing, the question arose whether there was evidence before the Commission to sustain its finding of actual waste to accrue as the result of lifting proration, and counsel were indulged to submit citations to that evidence. We have examined them, and find they abundantly and substantially sustain the finding, and it is not here subject to review, under the uniform rule that facts found from conflicting evidence by a tribunal empowered (as the Commission is by section 7959, C. O. S. 1921) to take evidence and make findings therefrom are binding upon the courts. [fol. 148] Park Falls Lumber Co. v. Burlingame, 1 Fed. (2d) 855.

With regard to the Act, its valid provisions stand, regardless of those which may not be so, and proration is supported by the former. We repeat what this court said in deciding the Champlin case:

"The entire state policy of proration of oil output is at stake. With the wisdom of it, this court has no concern. Our inquiry is only whether the statutes and the orders are constitutionally valid.

"The last section of the statute provides that if any part, clause or sentence is invalid the rest is not to be af-

fected. With this reservation added the rule is that any valid portion of the enactment must be sustained. Williams v. Standard Oil Co., 278 U. S. 235.

"It has been authoritatively decided that it is competent state legislation to prevent waste of gas or oil, both to protect producers from a common pool and to conserve the resources of the state. It is a valid exercise of the police power. Ohio Oil Co. v. Indiana, 177 U. S. 190; Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61; Walls v. Midland Carbon Co., 254 U. S. 300. The statutes must therefore be sustained in prohibiting waste of oil. * * *

"The proration contained in the orders of the Commission recites that a purpose is to prevent waste, as defined by the statute. There are findings that it would occur in different ways; for example, absence of market or transportation facilities, requiring the oil to go into earthen storage, and increase prior storage, which spell deterioration and loss. * * * The proration orders are in general valid because of a sufficient fact to sustain them, to-wit, the prevention of waste."

We cannot agree that as insisted the Act fails for uncertainty. The indefinite provisions may be disregarded. The Supreme Court of the state has construed the Act in a manner that renders it valid. Julian O. & R. Co. v. Capshaw, 292 Pac. 841. In such case, doubts should be resolved in favor of the state. Toombs v. Citizens' Bank, 281 U. S. 643.

The plaintiffs have had due opportunity to be heard before the Corporation Commission. And from the foregoing views of the controversy, we conclude they have not estab- [fol. 149] lished that this proration is an unwarranted exercise of the police power of the state and effects a taking of their property without due process of law or denies them the equal protection of the laws.

There remains one other contention worthy of notice and that is whether the proration is unconstitutional and invalid because it regulates or is a burden on interstate commerce.

It appears that a large portion of the potential oil in the state would, if limited production were allowed, be shipped out of the state, and go into the channels of interstate commerce. But the interference therewith is too remote. The

plaintiffs, as lessees, have a right to explore for and obtain oil from the leaseholds, and it is a valuable property right. Yet they obtain no title to the oil until it is reduced to possession. Ohio Oil Co. v. Indiana, 177 U. S. 190; Rich v. Donaghey, 71 Okla. 204; Alexander v. King, — Fed. (2d) —, (10 C. C. A.) decided Jan. 2, 1931. It is certainly a far-fetched view that proration affects commerce in a commodity to which the parties have not yet acquired title. The production of oil may be likened in a measure to the manufacture of goods, or the mining of coal, which is not commerce, although they are intended to be and are afterwards shipped in interstate commerce. Hammer v. Dagenhart, 247 U. S. 251, at p. 272; Delaware L. R. Co., v. Yurkonis, 238 U. S. 439.

Cases are cited which deal with statutes directly or indirectly restraining interstate commerce in commodities. The Oklahoma Law contains no such restraint but is aimed at conservation against waste of potential oil. It is sufficient to refer again to the cases heretofore cited to sustain such legislation. But even in those cases where statutes were held invalid as hampering interstate commerce, the decisions apply only after ownership of the commodity [fol. 150] arises. For example, in Oklahoma v. Kansas Nat. Gas Co., 221 U. S. 229, the court observed that "gas, when reduced to possession, is a commodity; it belongs to the owner of land, and when reduced to possession is his individual property, subject to sale by him and may be a subject of intrastate commerce and interstate commerce." And in Penna. v. West Virginia, 262 U. S. 553, at p. 586, it is said: "When a surface owner thus reduces it (gas) to possession he becomes its owner and it becomes a subject of commerce, like any product of the forest, field or mine." A case furnishing a close analogy is Foster-Fountain Packing Co., v. Haydel, 278 U. S. 1, which involved a state law prohibiting the taking of shrimp for transportation and sale in interstate commerce, and it was ruled: "As to such shrimp, the protection of the commerce clause attaches at the time of taking." The settled doctrine that the buying and selling of goods for shipment beyond a state is interstate commerce does not apply to proration of oil production under state law.

The several applications for temporary injunctions are denied.

[fol. 151] IN UNITED STATES DISTRICT COURT

DISSENTING OPINION

Before John H. Cotteral, Circuit Judge; R. L. Williams and Franklin E. Kennamer, District Judges, Sitting at Oklahoma City, Oklahoma

KENNAMER, District Judge (dissenting):

The object of this action is to restrain the enforcement of certain orders of the Corporation Commission of Oklahoma City, restricting the amount of oil complainant may produce from its oil producing properties within Oklahoma, designated as proration orders. The orders complained of were made under the authority of provisions of the statutes of Oklahoma, and will be set out herein. The statute upon which the proration orders are bottemed is herein attacked as unconstitutional, and several grounds are urged in support of the attack. It is also insisted that the manner of the enforcement of the statute renders the proration orders invalid as in contravention of the federal constitution. Evidence was presented in support of the allegations of the bill of complaint, and the following is a brief statement of the bill of complaint, as well as a reference to some of the decided cases of interest in the consideration of the case, and my conclusions. The case was most ably presented, exhaustive briefs have been submitted, but the propositions involved render it unnecessary to treat each of the numerous principles urged for a determination of the case.

The material allegations of the bill of complaint are that the Champlin Refining Company is a corporation organized and existing under and by virtue of the laws of the State of New Mexico, and is a citizen of that state; that it has been duly authorized to transact business within the State of Oklahoma, with its principal office and business located in the City of Enid, Oklahoma. It is engaged in the business of producing, refining, transporting and marketing petroleum, natural gas and their products. It owns and operates an oil refinery at Enid, Oklahoma, with a daily capacity of approximately 17,000 barrels of crude oil, which plant refines and manufactures gasoline, kerosene, lubri-
[fol. 152] cating oil, waxes, and other products. That in

connection with its refinery, it operates approximately 735 bank cars for the distribution of its refined products among its customers and trade in Oklahoma, Texas, Colorado, Kansas, Arkansas, Missouri, Minnesota, Iowa, Nebraska, South Dakota, North Dakota, Wisconsin, Michigan, Illinois, New Mexico and California, and operates approximately 470 miles of pipe line for the transportation of its products, 263 retail gasoline filling stations, and 256 wholesale stations in the various states. It is further alleged that it operates approximately 45 producing oil and gas leases, and has 400 undeveloped leases in the States of Oklahoma, Kansas, New Mexico and Texas, all representing an investment of several million dollars. The bill sets out specifically certain tracts of land on which the complainant has producing wells in what is known as the Oklahoma City oil field, describing said tracts as "A", "B", "C" and "D"; that it has a producing well on tract "A" which it has equipped at an expenditure of approximately $135,000.00; one on tract "B" at an expenditure of approximately $135,000.00; three wells on tract "C" at a cost, including the cost of the lease, at approximately $444,265.00, and six wells on tract "D" in which it owned a half interest, at a cost of approximately $125,000.00. That on or about June 30, 1930, the Corporation Commission of the State of Oklahoma, entered an order entitled "Order No. 5189, Cause No. 10,146", which prescribed the allowable production from each of the principal oil producing fields of the State of Oklahoma, which included the complainant's properties, and prescribed rules and regulations governing the production of oil from said field, and from time to time up to and including October 28, 1930, have amended and supplemented said order so as to prorate the amount of production that may be produced from the various properties of the complainant based upon an estimated potential production of the various oil fields of the State of Oklahoma, and that the said orders purport to allow 550,000 barrels of crude oil to be produced daily from the oil fields of the State of Oklahoma and recites in support thereof [fol. 153] that said figures represent the reasonable market demand for crude oil from said state; that the defendants have appointed and designated as their agents to enforce the orders, Otto B. Bradford, commonly known as an "umpire" for the Oklahoma City, Oklahoma, oil field, and

Ray M. Collins, commonly known as an "umpire" for the Greater Seminole oil field, and other fields within the State of Oklahoma; that the agents appointed by said Commission to enforce the orders are employees and agents of certain oil companies, and commonly known and designated as an "Operators' Committee" and competitors of the complainant; that many of the oil fields of Oklahoma are not prorated, but the respective owners of said wells in such fields are permitted to run their wells at full capacity; that the defendants are threatening to enforce said orders and to subject complainant to heavy penalties and fines for a violation of the orders. The bill attacks the authority of the Commission to make and enforce such orders, which is provided for in Sections 7954 to 7963 inclusive, Oklahoma Compiled Statutes, 1921, as being void for the reason that the sections of the statute under which the Commission has acted violates the Fourteenth Amendment to the Constitution of the United States, and further, that if the Act of the Legislature of February 11, 1915, known as the Conservation Act is constitutional, that the orders of the Commission are unconstitutional, because the Commission has so far exceeded its delegated powers as to render its rules, regulations, and proration orders violative of the Fourteenth Amendment to the federal constitution.

Upon a previous hearing of the application for a temporary injunction in this case, it was determined that it was the duty of complainant to apply to the Corporation Commission for a modification of the orders so as to permit complainant to operate its own wells without actual waste, before coming to this court for equitable relief, and the injunction was denied as no showing had been made that complainant's legal remedy was not adequate.

[fol. 154] It has been established by a supplemental bill and by evidence that the complainant made such an application to the Corporation Commission, but the relief sought was denied by the Commission.

Evidence introduced before the Commission upon the hearing of the application to modify the orders, which was not controverted, showed that complainant is in a position to produce oil from its properties in the Oklahoma City field, and other Oklahoma fields, without any actual waste; that its wells are equipped with modern equipment; that it has transportation facilities and a refinery for the proper

refining and marketing of its products, and the placing of the same upon the markets without actual waste. The orders of the Commission as entered and construed by it, and the agents charged with the duty of enforcing them, assert the right to restrict complainant in the amount of oil it may produce from its wells. They term the purpose for such restriction is to prevent an "inequitable or unfair taking, from a common source of supply, of such crude oil, and to prevent an unreasonable discrimination in favor of any one taking from the common source of supply as against another, and to prevent waste as defined in the Act of February 11, 1915."

The first question to determine is the constitutionality of the Act under which the Corporation Commission of Oklahoma derives its authority to enter the orders challenged by complainant. If the Act is violative of the federal constitution, it is invalid, and the orders entered by virtue of it will likewise be invalid, and complainant will be entitled to have their enforcement enjoined.

It is urged that the Act violated the Fourteenth Amendment to the United States Constitution, and that the orders as promulgated and enforced, which reflect the construction of the Conservation Act by the state authorities charged with the duty of enforcing it, violates Section 8 of Article 1, of the National Constitution, as an unwarranted interference with interstate commerce.

[fol. 155] The Act is entitled: "An act defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground and conferring authority on the Corporation Commission, prescribing the penalty for the violation of this act, and declaring an emergency." Section 1 to section 10 of the Act, inclusive, are as follows:

"Section 1. That the production of crude oil or petroleum in the State of Oklahoma, in such manner and under such conditions as to constitute waste, is hereby prohibited.

"Section 2. That the taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum is hereby prohibited, and the

actual value of such crude oil or petroleum at any time shall be the average value as near as may be ascertained in the United States at retail of the by-products of such crude oil or petroleum when refined less the cost and a reasonable profit in the business of transporting, refining and marketing the same, and the Corporation Commission of this State is hereby invested with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum by the standard herein provided, and when so determined, said Commission shall promulgate its findings by its orders duly made and recorded, and publish the same in some newspaper of general circulation in the State.

"Section 3. That the term "wastw" as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands. The Corporation Commission shall have authority to make rules and regulations for the prevention of such wastes, and for the protection of all fresh water strata, and oil and gas bearing strata, encountered in any well drilled for oil.

"Section 4. That whenever the full production from any common source of supply of crude oil or petroleum in this State can only be obtained under conditions constituting waste, as herein defined, then any person, firm or corporation, having the right to drill into and produce oil from any such common source of supply may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply. The Corporation Commission is authorized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply within the state of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply, of such crude oil or petroleum, by any person, firm or corporation, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

"Section 5. That for the purpose of determining such production, a guage of each well shall be taken under rules and regulations to be prescribed by the Corporation Commission, and said Commission is authorized and directed to make and promulgate, by proper order, such other rules and regulations, and to employ or appoint such agents with the consent of the Governor, as may be necessary to enforce this Act.

[fol. 156] "Section 6. That any person, firm or corporation, or the Attorney General on behalf of the State, may institute proceedings before the Corporation Commission, or apply for a hearing before said Commission, upon any question relating to the enforcement of this Act, and jurisdiction is hereby conferred upon said Commission to hear and determine the same. Said commission shall set a time and place, when and where such hearing shall be had and give reasonable notice thereof to all persons or classes interested therein, by publication in some newspaper or newspapers, having general circulation in the State, and in addition thereto, shall cause reasonable notice in writing to be served personally on any person, firm or corporation complain-d against. In the exercise and enforcement of such jurisdiction, said Commission is authorized to determine any question of fact arising hereunder, and to summon witnesses, make ancillary orders, and use mesne and final process, including inspection and punishment as for contempt, analogous to proceedings under its control over public service corporations, as now provided by law.

"Section 7. That appellate jurisdiction is hereby conferred upon the Supreme Court in this State to review the action of said Commission in making any order, or orders, under this act. Such appeal may be taken by any person, firm or corporation shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of the Corporation Commission. Said orders so appealed from shall not be superseded by the mere fact of such appeal being taken, but shall be and remain in full force and effect until legally suspended or set aside by the Supreme Court.

"Section 8. That in addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm or corporation, or any officer, agent or

employee thereof, directly or indirectly violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars ($5,000.00), or by imprisonment in the county jail not to exceed thirty (30) days, or by both fine and imprisonment.

"Section 9. That in addition to any penalty imposed under the preceding section, any person, firm or corporation, violating the provisions of this act, shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent jurisdiction, at the suit of the state through the Attorney General or any county attorney, but such receivership shall only extend to the operating of producing wells and the marketing of the production thereof, under the provisions of this act.

"Section 10. That the invalidity of any section, subdivision, clause or sentence of this act shall not in any manner affect the validity of the remaining portion thereof."

[fol. 157] An attack was made upon this act in the state court of Oklahoma, and its constitutionality was sustained by the Supreme Court of Oklahoma. Julian Oil & Royalties Co. v. Capshaw, et al., 292 Pac. 841. However, the federal court will decide whether the act violates the fourteenth amendment to the Constitution of the United States independently, and is not bound to follow a decision of the state court, as it is not a case of the federal court administering the state law, but is called upon to test the validity of it. Piqua Branch of the State Bank of Ohio v. Knoop, 16 How. 370, 14 L. Ed. 977; Connally v. General Construction Co., 269 U. S. 385, 70 L. Ed. 322.

It is conceded that section 2 of the act is invalid, as it is a price fixing statute. Clearly, the sole purpose of section 2 of the act, is to fix the price for crude oil or petroleum and for that reason is void. See Tyson & Bro. v. Banton, 273 U. S. 418, 71 L. Ed. 718; Williams v. Standard Oil Co., 278 U. S. 235, 73 L. Ed. 287.

It is to be noted that the act under consideration is penal, and provides that a violation of the act shall constitute a misdemeanor, providing both fine and imprisonment for a conviction. An attempt to define 'waste' is the subject of

the third section of the act. The ordinary meaning of the word is not difficult, and it is a term which is generally easy of application. In the act, an attempt is made to enlarge the term 'waste' and it is provided that the term shall include various "wastes" which seem incapable of definition, and certainly are vague and indefinite in both their meaning and application. Economics is regarded as a political science, but unlike a true science, it is indefinite and un- [fol. 158] certain. Science is knowledge of facts or principles; it is a reduction to a more or less certainty of facts or principles. An attempt has been made by economists to establish facts and principles in economic matters, and hence, it is regarded as a form of science. However, there are numerous theories upon the various economic subjects, and wide differences of opinions, as well as definitions, of economic subjects, among the economists. "Economic waste" has no definite meaning, even to economists, and certainly is the subject of uncertainty among those untrained in economics. "Waste incident to the production of crude oil or petroleum, etc." is uncertain. 'Reasonable market demands' as used in the act, sets no standard, but leaves the determination of this part of the act solely to the Corporation Commission, but at the same time subjects the producer of crude oil to a fine or imprisonment if he commits 'waste', which he cannot determine by any fixed standards. Section 4 is bottomed upon the commission of 'waste' as therein defined, and the uncertainty and indefiniteness of the term renders the entire section vague and indefinite. Aside from the term 'waste' as used therein, the entire section is indefinite. The sections of the act herein referred to are so vague and uncertain in their description as to what shall constitute a misdemeanor, punishable by fine or imprisonment, that they are invalid under the Fourteenth Amendment to the federal constitution. In the case of Connally v. General Construction Co., 269 U. S. 385, the court said: "Any statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning, and differ as to its application, violates the first essential of due process of law." See International Harvester Co. v. Kentucky, 234 U. S. 216; United States v. Cohen Grocery Co., 255 U. S. 81; Cline v. Frink Dairy Co., 274 U. S. 445. It

is apparent that the act attempted to authorize the Corporation Commission to determine the sufficiency of marketing facilities, or the reasonableness of market demand, both of which are uncertain.

[fol. 159] The evidence in the instant case established that the complainant has a market for its oil, has the facilities to transport it to its refinery, and has sufficient filling stations to market the refined product. However, under the orders of the Corporation Commission, it is not permitted to produce sufficient oil for its refinery's requirements, or for its marketing requirements. It was suggested at the hearing by those defending the constitutionality of the act and the proration orders made thereunder, that if complainant needed more crude oil for its refinery than it was permitted to run from its wells under the proration orders, that it could buy the oil at the posted price. Such a procedure would not eliminate waste; neither would it conserve crude oil. Its effect is merely to burden complainant, by compelling it to purchase crude oil at a price fixed by the Corporation Commission, while it has an abundance of crude oil which it is desirous to sell, at least after refining. Price fixing seems to be the object to be accomplished, rather than conservation, in view of the evidence in the instant case.

A consideration of the act in its entirely shows that the Commission was to have been vested with authority to determine the conditions under which crude oil might be produced and marketed. Under the pretense of preventing 'waste' as it is ordinarily used, and as used in the act, the Commission is vested with power to fix prices for crude oil or petroleum. In fact, that appears to be the sole purpose for the act. As the production of crude oil or petroleum is not affected directly with a public interest, the act must fail as violative of the Fourteenth Amendment to the federal constitution, as a price fixing statute.

As stated above, the producer of crude oil is subjected to the penalties of a misdemeanor for producing oil in such manner and under such conditions as to constitute waste, and the 'waste' referred to is so vague and uncertain, both as to its meaning, and as to its application, that the act is unconstitutional as violative of the Fourteenth Amendment, as a denial of due process of law.

[fol. 160] The state, acting under its general police powers, undoubtedly has the right to conserve natural resources within its territorial limits, although such resources are privately owned, and are beneath the surface of the land. This principle is well founded, for the reason that natural resources should be protected for the common good, and that the correlative rights of adjoining owners may be protected. However, a conservation of natural resources should involve the interests of the consuming public, and should be applied for the common good or weal. A limited supply of a natural resource demands a stricter conservation, even to the extent of increasing the price of the object if it be an incident to the conservation, and is not the primary purpose of the legislation. Where there is an abundance of a resource, such as crude oil, a conservation plan should be adopted which prevents and eliminates actual waste, but which should afford production at minimum costs, upon a competitive basis, so that the consuming public may have the advantage of reduced costs of the products. The public and common good demands that artificial means should not be employed, either directly or under the guise of a conservation measure, to increase the costs of the products. This principle is the basis upon which price-fixing statutes and acts are stricken down as invalid. The natural laws of supply and demand should regulate and fix the cost and price of crude oil, as it determines the price and cost of other articles, and unless crude oil is so directly affected with a public interest as a natural resource, necessarily to be carefully conserved by increasing the cost and price, that feature of it should not be the subject of legislation. We must take judicial notice of the over-production of crude oil, to say nothing of the evidence presented establishing the vastness of the over-production, and also of the common-ess of the use of the refined products, and the police power of the state should be exercised for the promotion of the common good in the use of the product as well as in its conservation. Nothing herein stated should be regarded as detracting from legislation which prevents actual waste of [fol. 161] crude oil, or any other natural resource. We are not able to find a similar statute in any other state to the one under consideration, and no precedent as to the manner of enforcement has been passed upon as a decided case.

In the case of Ohio Oil Co. v. Indiana, 177 U. S. 190, an

Indiana statute prohibiting the owner of an oil or gas well from permitting the escape of oil or gas into the air for more than two days, was sustained. Such an act not only promoted the common weal, but also protected the correlative rights of adjacent owners by preventing an exhaustion of the common supply by waste into the air. The statute also provided that the open flowing of a gas or oil well would endanger life and would be injurious to persons and property.

Midland Carbon Co. v. Wyoming, 254 U. S. 300, involved an act of the state of Wyoming for the conservation of natural gas from actual waste. Quinton Relief Oil & Gas Co. v. Corporation Commission, 101 Okla. 164, is cited, but in that case, the statute was sustained as purely a conservation act against actual waste. These cases differ widely from the questions presented in this case, and actual waste is not involved.

The right of an owner of land within Oklahoma to drill wells and reduce oil and gas to possession which lies beneath his land is a vested right protected by the Fourteenth Amendment to the Federal Constitution. The Oklahoma Supreme Court has repeatedly followed the rule that an estate in fee simple in lands in Oklahoma includes all oil and gas in place in and under the land so long as it rema-ns therein, and the owner of such land has a vested right to reduce to possession the oil and gas under his land, and to appropriate it to his own use. Wright v. Carter Oil Co. 97 Okla. 46; Rich v. Donaghey, 71 Okla. 204, 39 A. L. R. 356. The right to own property necessarily implies the right to use it and to enjoy the profits accruing therefrom, since without the latter the former cannot be of value. Green v. [fol. 162] Biddle, 8 Wheat. 1-76, 5 L. Ed. 566; Terrace v. Thompson, 263 U. S. 215, 68 L. Ed. 274.

In the case of Wright v. Carter Oil Co., supra, the Oklahoma Supreme Court said: "The right to reduce oil and gas to possession is a valuable property right." In the same case, the court held that "oil and gas belong to the owner of the land and are a part of it so long as they are on it or in it and subject to his control, but when they escape and go into other lands, or come under another's control through the natural reservoir, the title of the former owner is gone." Thus, an established rule of property has grown

around oil and gas, and such property rights are subject to protection as other property rights.

In Ohio Oil Co. v. Indiana, supra, the Court said: "On the other hand as to the gas and oil, the surface proprietors within the gas field all have the right to reduce to possession the gas and oil beneath. They could not be absolutely deprived of this right which belongs to them without a taking of private property". In West v. Kansas Natural Gas Co. 221 U. S. 229, the court in referring to the opinion of the Court in Ohio Oil Co. v. Indiana, said: "It surely cannot need argument to show that if they could not be deprived of the right to reduce the gas to possession they could not be deprived of any right attached to it when in possession." The trial court in the cited case, in construing an act of the legislature of Oklahoma prohibiting the transportation of natural gas in interstate commerce, held (172 Fed. 545) that natural gas found within the territorial limits of a state was not a product which the state may conserve and preserve by a law as a thing in which the people of the state have a common interest, as wild animals, but that it was an absolute property right, of which he could not be deprived without just compensation.

While the state, in the exercise of its police power, has the power, through appropriate legislation, to protect the public morals, health and safety, it cannot take private prop-
[fol. 163] erty from one person and transfer it to another for the private use and benefit of such person. The exercise of the police power is subject to constitutional limitations. "The chief restriction on this class of legislation is that vested rights must not be disturbed" Cooley's Constitutional Limitations, page 744.

In Lawton v. Steele, 152 U. S. 133, 38 L. Ed. 385, the Court said:

"To justify the state in thus interposing its authority in behalf of the public, it must appear first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interest, arbitrarily interfere with private business, or impose unusual and unnecessary re-

strictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts."

The evidence in the instant case establishes that the proration orders are enforced to protect the price of crude oil, rather than to prevent natural waste or to conserve petroleum, and thus are not in the interest of the public generally. It is obvious that the act complained of is not a reasonable use of the police power of the state, but is an interference with privately owned property rights. See Connoly v. Union Sewer Pipe Co., 184 U. S. 540; Adams v. Tanner, 244 U. S. 590; Traux v. Corrigan, 257 U. S. 312; Terrace v. Thompson, 263 U. S. 197, and Pennsylvania Coal Co. v. Mahon, 260 U. S. 393.

It is urged that the act complained of, together with the proration orders made under its authority, are invalid as an interference with interstate commerce. The Commission, in its findings of fact, found that the potential daily production in Oklahoma for October, 1930, was 3,638,478 barrels, and that it would increase during November and December, 1930; that the market demands for these months was approximately 550,000 barrels per day, [fol. 164] and that any amount in excess of the market demands should not be permitted to be produced; that the total potential production of crude oil in the United States approximates 10,000,000 barrels per day; that the domestic demands for oil in the United States is 2,800,000 barrels per day; that from 65 to 75 per cent of the crude oil produced from wells in Oklahoma and sold, is actually sold to refineries and producers who move it to points outside the State of Oklahoma. It therefore appears that from 65 to 75 per cent of the crude oil produced in Oklahoma goes into the channels of interstate commerce. The restriction in the production of crude oil under such circumstances is a direct interference with interstate commerce. The Commission also found that the importation of crude oil into the United States is approximately 300,000 barrels per day, and production is curtailed in Oklahoma to permit the continued importation, it seems.

In the case of Foster Fountain Parking Co. v. Haydel, 278 U. S. 1, 73 L. Ed. 147, the court said, "One challeng-

ing the validity of a state enactment on the ground that it is repugnant to the commerce clause is not necessarily bound by the legislative declarations of purpose. It is open to him to show that in their practical operation its provisions directly burden or destroy interstate commerce. In determining what is interstate commerce, courts look to practical considerations and the established course of business. Interstate commerce includes more than transportation; it embraces all the component parts of commercial intercourse among states. And a state statute that operates directly to burden any of its essential elements is invalid. A state is without power to prevent privately owned articles of trade from being shipped and sold in interstate commerce on the ground that they are required to satisfy local demands or because they are needed by the people of the state.'' See Swift v. United States, 196 U. S. 375; Lemke v. Farmers Grain Co., 258 U. S. 60; United Mine Workers of America v. Coronado Coal Co., 268 U. S. 295.

[fol. 165] The business of exploring for oil or gas does not itself constitute interstate commerce, but the business of reducing oil and gas to possession, as shown in the instant case, and an indispensible part of the course of business of refining crude oil and the placing of it, or its products in the commerce of the world. The regulations complained of will, and do, directly affect the market of such products, which prevent the shipping of the oil in interstate commerce.

In the case of United Mine Workers of America v. Coronado Coal Co. supra, Chief Justice Taft, said:

''The more reduction in the supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce. But when the intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control the supply entering and moving in interstate commerce, or the price of it in interstate markets, their action is a direct violation of the Anti-trust Act.''

The evidence clearly shows that the orders of the Commission are intended to restrict the volume of oil that may go into the channels of interstate commerce from the oil

fields of Oklahoma. The findings of the Commission as to the daily potential production of crude oil within the State of Oklahoma shows that Oklahoma is one of the major oil producing states of the Union. In the light of the decided cases I am clearly of the opinion that the effect of the orders of the Corporation Commission is a direct interference with interstate commerce. My conclusions are that the Act of the Legislature assailed in this action is unconstitutional because of its uncertainty, because it is a price fixing statute, and because it is a direct interference with interstate commerce; that the orders of the Commission complained of constitute an abuse of the police power of the state, and is not a proper exercise of such power in the interest of the common good. I therefore dissent from the conclusions reached by the majority of the Court.

[File endorsement omitted.]

[fol. 166] In United States District Court

Finding of Facts—Filed Feb. 9, 1931

At the temporary injunction hearing in this case on January 2 and 3, 1931, the essential and controlling question of fact was whether the Corporation Commission had substantial evidence before it showing that actual waste of oil would accrue from the lifting of proration, ordered by the Commission against the plaintiff. We find that such evidence was introduced before said Commission and considered by it in ordering proration, and further find that such waste would accrue and this court accepts the finding of the Corporation Commission as conclusive on that subject.

February 9, 1931.

John H. Cotteral, Circuit Judge. R. L. Williams, District Judge.

I dissent to the findings of fact by the majority of the court for the reason the complainants make no objection to any order that the Corporation Commission may make enjoining actual waste.

F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fol. 167] IN UNITED STATES DISTRICT COURT

Equity. No. 1156

CHAMPLIN REFINING COMPANY

v.

CORPORATION COMMISSION et al.

ORDER ON APPLICATION FOR TEMPORARY INJUNCTION—Filed Feb. 9, 1931

On this day the application of the plaintiff for a temporary injunction in said cause, presented in the amended and supplemental bill herein against the enforcement by the defendants of oil proration orders of the Corporation Commission of the state of Oklahoma, and duly submitted upon the evidence of the parties and the arguments of counsel, January 2 and 3, 1931, comes on for determination, and after due consideration of the same, it is by the court

Ordered, that said application be denied. To this order, the plaintiff at the time duly excepts.

Guthrie, Oklahoma, February 9, 1931.

John H. Cotteral, Circuit Judge. R. L. Williams, District Judge. —— ——, District Judge.

I dissent to the findings of fact by the majority of the court for the reason the complainants make no objection to any order that the Corporation Commission may make enjoining actual waste.

F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fol. 168] IN UNITED STATES DISTRICT COURT

ORDER ADOPTING OPINIONS AS CONCLUSIONS OF LAW—Filed April 11, 1931

It is ordered that the respective opinions handed down herein and filed by each of the Judges shall be and hereby are considered and adopted as the conclusions of law of each of

said judges sitting in said cause upon the trial for the application of a temporary injunction, said opinions being the conclusions of law of said Judges in compliance with Equity Rule 70½.

Made and entered as of date 9 day of February, 1931.

John H. Cotteral, Circuit Judge. R. L. Williams, U. S. Dist. Judge. F. E. Kennamer.

[File endorsement omitted.]

[fol. 169] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION FOR AN ORDER PERMITTING THE ABOVE ENTITLED CAUSE TO BE CONTINUED AND MAINTAINED AGAINST PAUL WALKER AS SUCCESSOR IN OFFICE AS A MEMBER OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA TO THE DEFENDANT FRED C. CAPSHAW SUBSTITUTING THE SAID PAUL WALKER AS A PARTY DEFENDANT IN LIEU OF FRED C. CAPSHAW AND DISMISSING THE SAID ABOVE ENTITLED CAUSE AS TO THE SAID FRED C. CAPSHAW—Filed Mar. 31, 1931

Comes now the Champlin Refining Company and respectfully shows to the Court that at the time of the filing of the second amended and supplemental bill of complaint Fred C. Capshaw was a duly elected, qualified and acting member of the Corporation Commission of the State of Oklahoma; that his term of office as such member expired on the 10th day of January, 1931; that Paul Walker having been duly elected as a member of said Corporation Commission qualified as a member thereof on the 10th day of January, 1931 and is now a duly elected, qualified and acting member of the Corporation Commission of the State of Oklahoma;

That the said Paul Walker and the defendants E. R. Hughes and C. C. Childers now constitute the Corporation Commission of the State of Oklahoma, and that the said Paul Walker in conjunction with the said E. R. Hughes and C. C. Childers are continuing and are threatening to continue to make and enforce from time to time rules and

regulations and orders complained of in the plaintiff's second amended and supplemental bill of complaint.

[fol. 170] Wherefore the plaintiff respectfully prays the order of this Court permitting the above entitled cause to be continued and maintained by it against Paul Walker as a successor in the office of a member of the Corporation Commission of the State of Oklahoma and against the defendants E. R. Hughes and C. C. Childers as such member of the Corporation Commission of the State of Oklahoma substituting the said Paul Walker as a party defendant in lieu of the defendant Fred C. Capshaw and dismissing the cause as against the said Fred C. Capshaw.

Horace G. McKeever, George S. Ramsey, Harry O. Glasser, Edgar A. de Meules, Geo. S. Ramsey, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 171] IN UNITED STATES DISTRICT COURT

[Title omitted]

CONSENT TO ENTERING OF ORDER PERMITTING THE ABOVE-ENTITLED CAUSE TO BE CONTINUED AND MAINTAINED AGAINST PAUL WALKER, AS SUCCESSOR AS A MEMBER OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, TO THE DEFENDANT FRED C. CAPSHAW—Filed Mar. 31, 1931

Comes now Paul Walker and consents that the above entitled cause may be continued and maintained against him as a member of the Corporation Commission of the State of Oklahoma as successor in office to the defendant Fred C. Capshaw, and consents to the substitution of himself as a party defendant in lieu of the said Fred C. Capshaw.

Paul Walker.

[File endorsement omitted.]

[fol. 172] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER PERMITTING CAUSE TO BE CONTINUED AND MAINTAINED AGAINST PAUL WALKER AS A MEMBER OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND AS SUCCESSOR IN OFFICE TO THE DEFENDANT FRED C. CAPSHAW—Filed Mar. 31, 1931

This cause coming on to be heard on this 31st day of March, 1931, upon the application of the plaintiff for an order permitting the above entitled cause to be continued and maintained against Paul Walker as a member of the Corporation Commission as successor in office to the defendant Fred C. Capshaw and substituting said Paul Walker as a party defendant in lieu of the defendant Fred C. Capshaw, and dismissing the above entitled cause as to the defendant Fred C. Capshaw:

The Court finds that there is a substantial need for continuing and maintaining the above entitled cause and for obtaining a judicial determination of the questions involved, and said Paul Walker having filed his written consent to the entering of the order prayed for, and the Court being fully further advised in the premises,

It is hereby ordered that the above entitled cause be continued and maintained against said Paul Walker as a [fol. 173] member of the Corporation Commission of the State of Oklahoma in succession in office to the defendant Fred C. Capshaw; that the said Paul Walker be substituted as a party defendant in lieu of the said Fred C. Capshaw and that the cause be dismissed as to the defendant Fred C. Capshaw.

John H. Cotteral, Circuit Judge. R. L. Williams, U. S. District Judge. F. E. Kennamer, U. S. District Judge.

[File endorsement omitted.]

[fol. 174] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Equity. No. 1156

CHAMPLAIN REFINING COMPANY, a Corporation, Plaintiff,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA and Paul Walker, E. R. Hughes, and C. C. Childers, Constituting the Corporation Commission of the State of Oklahoma, and Their Successors in Office, and Fred Capshaw, E. R. Hughes, and C. C. Childers, Defendants

Statement of Evidence under Rule 75-B

The following is an agreed condensed statement, in narrative form, of all the evidence introduced at the hearing for a temporary injunction, made in pursuance of Equity Rule 75-B and lodged in the Clerk's office as provided by said rule:

AFFIDAVIT OF H. H. CHAMPLIN, INTRODUCED ON BEHALF OF THE PLAINTIFF-APPELLANT

H. H. Champlin states that he is president, general manager and controlling stockholder of the plaintiff corporation, Champlin Refining Company, and has been such since he organized said company.

That said company has been engaged in business with its principal plant at Enid, Oklahoma, since the year 1920; the company is now organized under the laws of the State of New Mexico, though formerly had a charter in the State of Maine.

The said Champlain Refining Company is engaged in the business of refining, transporting and marketing petroleum, natural gas and other products and owns and operates its refinery at Enid, Oklahoma, which has a capacity of approximately 17,000 barrels of crude oil per day, wherein it manufactures gasoline, kerosene, lubricating oils, waxes, greases and other products in connection therewith; own [fol. 175] tank cars, approximately 735 in number, and through said tank cars distributes its refined products to

its customers and to the trade in interstate commerce in Texas, Colorado, Kansas, Arkansas, Missouri, Minnesota, Iowa, Nebraska, South Dakota, North Dakota, Wisconsin, Michigan, Illinois, New Mexico and California, in addition to its distribution of such products in intrastate commerce within the State of Oklahoma.

Said company owns, operates and controls approximately 470 miles of pipe line used for the transportation of crude oil to its refinery, and owns and maintains approximately 263 retail gasoline filling stations, and approximately 256 wholesale gasoline stations, a portion of which are within the State of Oklahoma, and the others being in Kansas, Texas, Iowa, Colorado and Illinois.

That the amount of its products as transported and shipped in interstate commerce is shown by the affidavit of G. E. Leverton, the auditor of said company, which affidavit is herein filed; that its lease holdings, in addition to the producing leases shown by the affidavit of D. W. Cotton herein filed, comprises approximately 400 undeveloped oil and gas leases in the states of Oklahoma, Kansas, New Mexico and Texas, and that the entire investment of the said company in all of its various properties amounts to several million dollars; that said company is the owner of the producing oil and gas leases which are described in the affidavit of the said D. W. Cotton, and also set forth in plaintiff's Second Amended and Supplemental Bill of Complaint.

That the plaintiff has drilled and equipped two wells in the Oklahoma City field at an approximate cost of $135,000.00 each, and has produced and equipped nine wells in what is known as the Seminole area which, together with the cost of said leases, represent an investment of approximately $600,000.00.

That plaintiff's refinery located at Enid, Oklahoma, is modern in every particular and is equipped with all of the modern and up to date appliances for cracking and refining crude oil; that plaintiff has a market for all of the refined products it can manufacture and can produce crude oil from its own wells in the Oklahoma City and Seminole fields at less cost than the posted market price, which is from $1.00 to $1.07 per barrel, depending on gravity; that

plaintiff can produce crude oil from its own wells, including the initial cost, for approximately 60¢ per barrel; that the two wells in the Oklahoma City field have a daily potential production of approximately 6,000 barrels and 9,600 barrels respectively; that on account of the proration orders of which the plaintiff complains, it is unable to run its wells on the present time proration but 2.78%, the effect of which is to deny the said plaintiff a right to use its own oil and compelling it to go into the open market and purchase prorated oil from other producers in the field at a price far in excess of what it costs plaintiff to produce said oil; that plaintiff can operate its wells in the Oklahoma City field for a year, not including the initial cost, at from 10¢ to 15¢ per barrel; that plaintiff has under the proration orders but approximately 1,800 barrels per day allowable production from its own wells, including royalty oil, which amount it is unable to run every day on account of the method used by the Corporation Commission through time proration, and to run its refinery at full capacity would necessitate said plaintiff going into the open market and purchasing approximately 15,200 barrels per day; that plaintiff is not only fully equipped to produce and refine said oil without waste, physical or otherwise, but is equipped to market the [fol. 176] same and the refined products therefrom, and that under the proration orders, if compelled to purchase oil at the posted price from other producers, the plaintiff cannot operate its refinery except at a great sacrifice and loss; the plaintiff company has been engaged in refining oil and shipping the refined products and also crude oil in interstate commerce for a period of ten years; that the oil it produces from its own leases is within reach of its gathering lines, as is the Oklahoma City and Seminole fields, and has heretofore been transported to and refined in plaintiff's own refinery at Enid, Oklahoma, and for its production in the Oklahoma City field it has equipped itself fully and provided for the transportation of the oil of said field to its refinery with the intention and purpose of refining said oil in its own refinery at Enid and shipping the same, or a great portion thereof, to its customers and trade in interstate commerce where it has a market demand for the same but was stopped from so doing by the orders complained of in the pleadings herein filed as made by said Corporation Commission and by the threats of enforcement of said

orders by said commission and the imposing of the penalties provided in the 1915 so called Conservation Act set forth in plaintiff's bill of complaint; that unless prevented by the defendants' orders and a continuance thereof or renewals thereof, and rules and regulations made by the defendant Corporation Commission, plaintiff will continue to refine at its own refinery its own oil produced from its own wells, products sold and to be sold in intrastate and interstate commerce and will continue to supply its trade, both in intra and interstate commerce, through its own tank wagons, tank cars and filling stations, which stations it owns in the state of Oklahoma, Kansas, Texas, Iowa, Colorado and Illinois, and in addition thereto will ship in interstate commerce to its many customers and to the trade in the states of Arkansas, Missouri, Minnesota, Nebraska, South Dakota, North Dakota, Wisconsin, Michigan, New Mexico and California, where it has a market demand for such products.

This plaintiff suffers irreparable injury and loss every day said proration orders complained of in plaintiff's Second Amended and Supplemental Bill of Complaint are in force and effect. That not including the initial cost of the wells, it suffers a loss each day of the difference between the posted price for crude oil of $1.00 to $1.07 per barrel and the cost of producing the oil of 10¢ to 15¢ per barrel, making an approximate loss which the plaintiff now suffers each day of upwards of 90¢ per barrel, thereby if running said refinery at capacity it would reflect a loss each day on the item alone of furnishing crude oil to the refinery of upwards of $13,000.00; that plaintiff has been compelled, in order to minimize the loss and still supply its regular customers, to run its refinery at a minimum capacity and suffer a loss of approximately $3,000.00 a day, which this affiant states is directly and indirectly chargeable to said proration orders complained of.

Affiant states further that prior to the time said oppressive and unwarranted orders of the Corporation Commission were issued, conditions were such that the refinery could make a profit by going into the open market and purchasing such oil as it desired, but that under such orders it cannot now do so for the reason that the curtailment of production of crude oil by the proration method practiced by the Corporation Commission of Oklahoma has maintained

a high price level for crude oil far in excess of the value of said oil based on the available supply, and this affiant states that in effect the curtailment of crude oil production under [fol. 177] said orders complained of fixes the price of crude oil and holds said price on the high levels maintained, and that it is affiant's belief that said proration orders are made in keeping with the plan of the major importing oil companies, their subsidiary companies and those dependent upon them, by using the Corporation Commission as a shield against the prosecution for violation of the Sherman Anti-Trust Act.

This affiant further states that the oil and refined products shipped in intrastate and interstate commerce as shown by the affidavit of G. E. Leverton herein filed indicates the proportion in quantity of such shipments and the schedule hereto attached marked "Exhibit A" indicates the financial returns from the sale of said products on the market at the time of the manufacture, sale and shipment of said products.

The said plaintiff company has an investment in its refinery, tank cars and filling stations in Oklahoma and filling stations outside of Oklahoma in the amounts for each as shown by the schedule hereto attached, marked "Exhibit B", and made a part hereof.

EXHIBIT "A" TO CHAMPLIN AFFIDAVIT

Sales Value F. O. B. Enid, Oklahoma, of Refined Products Sold July 1, 1928, to November 30, 1930

	Intrastate	Interstate	Total
Last 6 months 1928	$1,442,675.01	$4,052,008.21	$5,494,683.22
12 months 1929	2,926,481.10	7,094,114.87	10,020,595.97
11 months 1930	2,101,233.68	6,456,820.28	8,558,053.96
Grand total	6,470,389.79	17,602,943.36	24,073,333.15

[fol. 178] EXHIBIT "B" TO CHAMPLIN AFFIDAVIT

Costs of Investments as of November 30, 1930

Plant:	
Refinery and Equipment	$4,263,213.38
Pipe Line	3,036,890.56
Total Plant	7,300,103.94
Tank Cars	1,286,658.43
Filling Stations and Marketing Equipment:	
Situated within Oklahoma	1,698,677.00
Situated outside of Oklahoma	1,276,981.37
Total	2,975,658.37

[fol. 179] AFFIDAVIT OF D. W. COTTON ON BEHALF OF PLAINTIFF-APPELLANT

That he resides at Enid, Oklahoma, and that he is an officer of the Champlin Refining Company, the complainant herein, and a member of the Board of Directors, and is familiar with the Company's business and is actually engaged as one of the managers of said business.

Affiant states that the complainant Company has, in what is known as the Oklahoma City, Oklahoma, oil field, two completed wells, one of which, on the test, showed a production of 4,400 barrels per day, and the other of 6,000 barrels per day, each of which are now shut in and producing no oil, awaiting the decision of the Courts.

That the said Company owns and operates a refinery at Enid, Oklahoma, of a capacity of 17,000 barrels per day crude, and has facilities for the distribution and sale of the products from said refinery, being equipped with 735 tank cars distributing its products from the refinery over the State of Oklahoma, Texas, Colorado, Kansas, Arkansas, Missouri, Minnesota, Iowa, Nebraska, South Dakota, North Dakota, Wisconsin, Michigan, Illinois, New Mexico and California and owns and operates, within said territory, approximately 265 retail gas filling stations and approximately 246 wholesale gas filling stations, the investment in said refinery, tank cars and filling stations amounting to several million dollars.

That the said Company has a market demand for its refined products in excess of the amount which it can manufacture from its own production.

Affiant further states that said Champlin Refining Company is the owner of Lots 30 to 35, inclusive, and 50 and 51, in Block 2, Roosevelt Place Addition to Oklahoma City, Oklahoma, and Lots 23 to 26, inclusive, Block 9 Armourdale Addition to Oklahoma City, Oklahoma, on each of which tracts of land is located a producing oil and gas well drilled and completed by said company, each at a cost of approximately $100,000.00 or over, and each of which tracts are a part of what is commonly known as the Oklahoma City oil pool and being within the bounds of the field and pool covered by the proration orders attached to plaintiff's bill of complaint herein.

That said Champlin Refining Company also owns the East Half (E. ½) of the Southeast Quarter (S. E. ¼) of the

Northeast Quarter (N. E. ¼) of Section Fourteen (14), Township Seven (7) North, Range Six (6) East, and an undivided one-half interest in the South Half (S. ½) of the Southwest Quarter (S. W. ¼) of Section Nine (9), Township Six (6) North, Range Six (6) East, both in Seminole County, Oklahoma, and both a part of what is known as the Seminole Field, on the first of which tracts this Company has three (3) completed oil wells which, including the property, cost said Company over $400,000.00, and on the second of said tracts this Company has an undivided one-half interest in six (6) producing oil wells which cost said Company approximately $125,000.00.

That said Company is running no oil through the lines from the Oklahoma City field, but is running such crude oil [fol. 180] as it can from the Seminole district to supply, together with what it has to purchase from other producers, the needs of its refinery.

Affiant further states that the Cimarron Valley Pipe Line Company has connected said Company's pipe line with the Oklahoma City field by an 8 inch line, with a capacity of approximately 18,000.00 barrels per day, which Cimarron Valley Pipe Line Company is a subsidiary of the Champlin Refining Company, and that said Champlin Refining Company owns a combination six and eight-inch line from the Seminole field from where it transports crude oil to its refinery at Enid, Oklahoma, which has a capacity of 11,000 barrels per day.

Affiant further states that said Company has resisted the orders promulgated by the Corporation Commission through the Operators' Committee, copies of which are attached to plaintiff's bill of complaint herein, and has refused to report to or pay any of the expenses of said Committee or Umpires, and has been cited to appear before the Corporation Commission to show cause why proceedings in contempt should not be instituted against said Company and said Company has been threatened with contempt proceedings in the event it neglects, fails or refuses, or for any reason violates said order so promulgated.

Affiant further states that said Champlin Refining Company has taken no part with other oil producers in an attempt to prorate the oil in the Oklahoma City oil field but has consistently refused to take part therein or to be bound by any order of the Corporation Commission concerning

the same, or any order prepared by said Operators' Committee, or to recognize any of said orders as being such as are authorized by law, or as the Corporation Commission or the said Operators' Committee had either authority or jurisdiction to make under the law or otherwise, and has shut in its production only because it has been threatened by the Corporation Commission with contempt proceedings and receivership of its properties; that it has consistently refused to make any application to the Corporation Commission or submit any evidence concerning proration of its oil for the reason that it has at all times consistently contended, and still does, that the Corporation Commission nor any agency of either the Corporation Commission or other oil companies have jurisdiction or authority of said company to regulate its oil production from its own properties, either in the way of proration or otherwise.

[fol. 181] AFFIDAVIT OF W. P. HASEMAN ON BEHALF OF PLAINTIFF-APPELLANT

I am a resident and citizen of Oklahoma City, Oklahoma, and am 52 years of age. I received my education at the Indiana University and the University of Pennsylvania and hold the A.B., A.M. and Ph.D Degrees. My major and minor subjects were Physics, Mathematics and Engineering. I am a member of the American Physical Society, the American Association of Petroleum Geologists and of the Honorary Scientific Society, Sigma XI. I am by training, education, experience and occupation a Research Physicist and Engineer. During 1907 to 1909 I was associate Professor of Physics in Indiana University and from 1909 to 1919 was Professor of Physics in the University of Oklahoma. I have spent the last ten years largely in Research and developmental work in Petroleum Geology and Engineering. I have recently made an analysis of the available proration production data from the Oklahoma City oil pool; the object of this analysis being to determine the extent of the decline of the production and the ultimate yield of oil in that pool.

An interpretation of the data of the Oklahoma City oil pool so obtained, indicates that the method of proration of production in practice is conducive to, and has resulted in a

material waste and loss of recoverable oil and gas. This waste is underground and consists largely of oil that has lost its natural intimate association and relationship with gas and vapors under pressure and has been left in the reservoir rock in such a condition that it cannot be produced economically, by any improved method of production. As evidence of this waste, the following examples are given.

Example 1

The quantity of oil in barrels produced from the Oklahoma City pool, and on file in the office of the proration officer, during the week ending December 23, 1929, and succeeding weeks thereafter, together with the number of producing wells at the end of each week, is tabulated in Table 1, and attached hereto.

The production data represent the total yield of oil from all types and classes of wells under the existing program of development and production in the pool. The effect of proration on the production in the pool must neeessarily be sought and determined from an analysis of the production from an average well in the pool and not from the production of either the exceptionally large or small well. The yield of the average well for the pool is to be defined and determined by dividing the weekly production in Table 1 by the number of wells producing at the end of the week in question. For example, the number of barrels produced during the week ending June 30, 1930, was 809,981 with 314 wells producing. The average well of the pool produced 2,579 barrels during the week.

It is evident that the extent of the decline of the production and the ultimate production from this defined average well, will be affected by the existing methods of development and production as well as by the existing and fixed [fol. 182] underground conditions. The production of the defined average well is tabulated in column 4 of Table 1. A graphical representation of the production data of the average well is given on Chart 1. This chart pictures progressively the relation of the weekly oil production from the average will, with the time in weeks. The graph shows a linear trend relationship between the barrels of oil produced each week, and the time in weeks. It is therefore possible to extend this line and thereby determine the

future weekly production of the average well under the existing conditions of development and production. The chart shows that within forty weeks from July 28, 1930, the average well in the pool as defined in Table 1 will be producing around 300 barrels per week. It is questionable whether such a well as this can be economically produced with present lifting devices.

The data table and chart show under proration that the production of the average well declined from 10,000 barrels per week on December 23, 1929, to less than 2,000 barrels on July 28, 1930, even though new wells were completed each week. The yield of the pool during this time was around 20,000,000 barrels, as shown by Column 5, Table 1, hereto attached, data for which was obtained by affiant from the office of the Proration Officer. During the same time 313 new wells were completed and available for production. At least 150 of these new wells produced during the entire period in addition to the 57 wells that were producing on December 23, 1929. Therefore, 207 wells produced approximately 20,000,000 barrels, giving a production of approximately 100,000 barrels per average well. Since the decline of the average well was from 10,000 barrels per week for the week ending December 23, 1929, to 1,403 barrels per week for the week ending July 28, 1930, indicating a decline of approximately 8,000 barrels per week and representing a yield of only 11.6 barrels of oil per barrel decline, comparable as with Seminole and Tonkawa where this factor exceeded 35 barrels per barrel decline. The yield from the average well, relative to its decline in production, is excessively low.

The chart gives data from which it is possible to readily compute the ultimate production of any well, with a ten acre spacing as in the Oklahoma City pool. Such a computation will give an estimated ultimate yield per average acre for 800 or more wells on 8,000 or more acres not to exceed 15,000 barrels per acre as evidenced in Chart 2, it being here assumed that there will be 800 wells ultimately completed and that the area drained thereby will be 8,000 acres.

Chart 2 represents the relation graphically pictured, of the weekly production per average well to the cumulative production at any given week end within the period of time represented by Table 1. From this chart it may be seen

that the weekly production declines with the increase of cumulative production such that the average 10,000 barrel well will cumulate approximately 190,000 barrels of oil. Since a 10,000 barrel well yields an ultimate of 190,000 barrels each barrel of the 10,000 yields only 19 barrels ultimately and with a spacing of ten acres per well a 10,000 barrel well will return a total acreage yield of 19,000 barrels. However, the average well during the life of the pool will not be as large as 10,000.

In fact the average well of the pool as reflected by the charts will be such that the acreage yield will not exceed 15,000 barrels per acre.

[fol. 183] The Seminole City pool, producing from shallower and thinner formations of the same geological age has already produced around 24,000 barrels per acre, with an estimated ultimate of 27,000 barrels per acre.

The average initial production of oil and gas, in the wells in the Oklahoma City pool has been much larger than the wells in Seminole, and other pools producing from the Wilcox sand and siliceous lime, yet the average acreage yield will be approximately one-half of that of the Seminole City pool.

It is generally conceded that the average acre of the Oklahoma City pool, contained originally, more oil and gas than Seminole, yet under existing methods of development and production, the yield will be much less.

This unnecessarily low yield per acre must be attributed, more to the method of production than to the method of development, because the development of the Oklahoma City pool is comparable to that of other deep Oklahoma pools. It is possible that other factors may have contributed some to this exceptionally low yield but the proration method of producing the oil is in the main, responsible for the low yield and huge loss of oil as will be evident from Example 2.

Example 2

The rate of oil production from a pool, lease, or a well, reaches a maximum value before the rate of the gas production reaches a like maximum. In other words, upon opening a well it requires some time for both the oil and gas in the fluid stream to be speeded up and acquire a maximum speed. In cases where the gas and vapor pressures move

the fluids through the producing reservoir rock into and out of the well, the yield of oil per hour from the well will reach a maximum in advance of the yield of gas per hour. In the Oklahoma City pool, a well will require around four hours to head up and flow oil at its maximum rate while it will require more than four hours to head up and flow its gas associated with oil, at a maximum rate. The rate of the oil is necessarily declining before the rate of producing the gas has reached its maximum value. In order therefore, to conserve gas and gas energy with the intermittent flow of a well, the flow should be stopped before the maximum rate of flow of gas has been reached. The probable intermittent period for the average well in the Oklahoma City pool will fall within four hours for efficient flow.

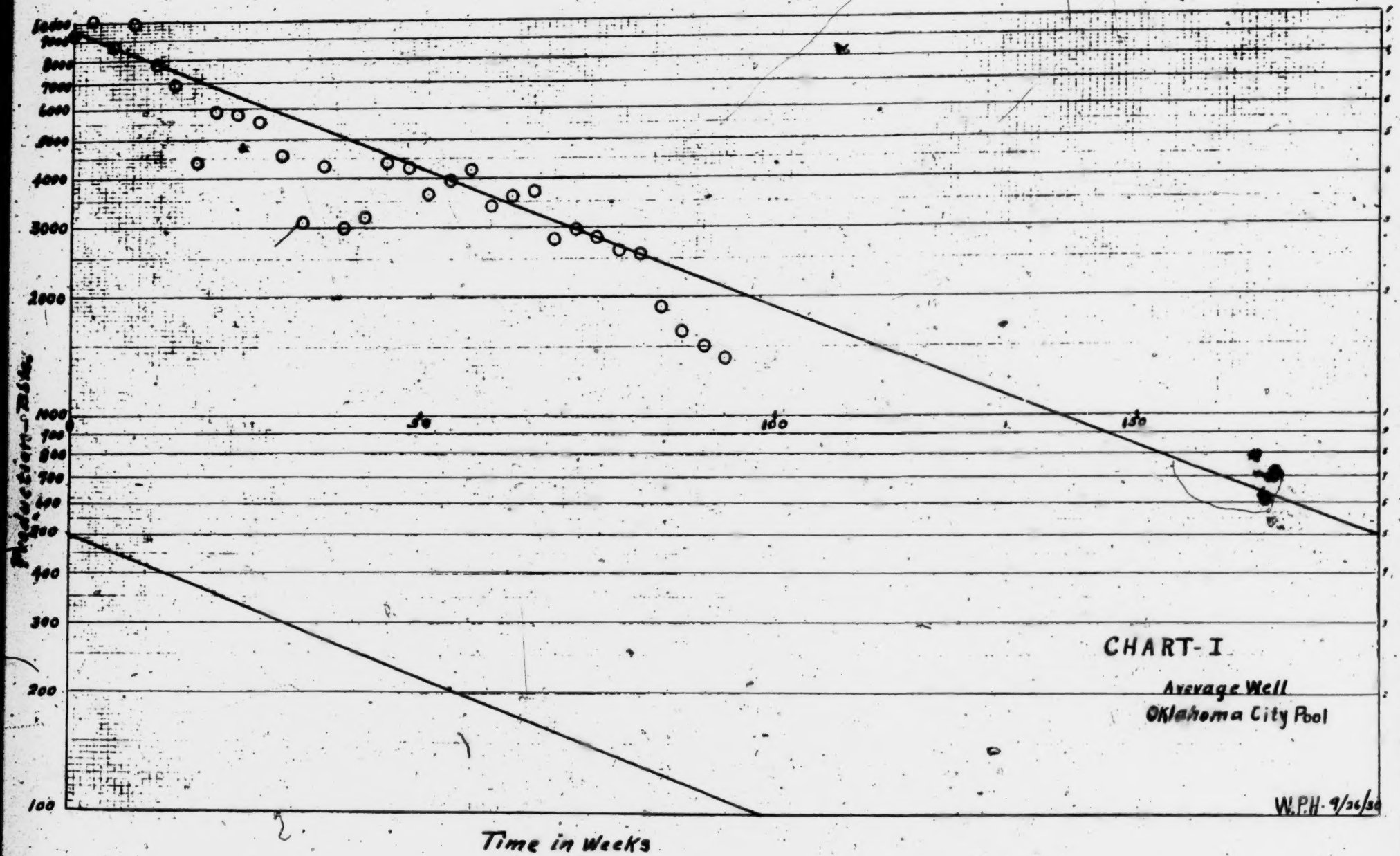
Gas and gas energy can be controlled and conserved in the steady flow of a well in a more practical way, by properly tubing the well and applying back pressure. Neither of these well known means of conserving gas and gas energy, have been put in force by the proration method of producing oil in the Oklahoma City pool.

The flowing of the average well wide open in the Oklahoma City pool for an arbitrary period of one day and then closing it for six to twelve days, produces the oil with an excess of gas and gas energy over that required if flowed efficiently. The proration method of producing oil in Oklahoma doubtless does assist in securing a better price for the oil and if applied may not injure the production of old pools, but it certainly has already materially decreased the ultimate production of the Oklahoma City pool. It is therefore not conserving the natural re-resources of the state. [fol. 184] Scientific and practical knowledge will not support the present proration method of producing oil in the Oklahoma City pool, as a means for the conservation of the natural resources, oil and gas.

Table I

Week ending	Production, bbls.	Number of producing wells	Production of average well (bbls.)	Total production, in bbls.
12-23-29	531,415	57	9,323	8,092,117
12-30-29	617,086	59	10,459	8,709,203
1- 6-30	595,634	68	8,760	9,304,837
1-13-30	716,676	72	9,953	10,021,513
1-20-30	573,560	73	7,857	10,595,023
1-27-30	541,514	78	6,942	11,136,587
2- 3-30	357,418	82	4,358	11,494,005
2-10-30	582,849	98	5,947	12,076,854
2-17-30	591,218	101	5,854	12,668,072
2-24-30	617,194	111	5,560	13,285,267
3- 3-30	555,835	122	4,556	13,841,152
3-10-30	416,103	133	3,129	14,257,255
3-17-30	618,878	143	4,326	14,876,133
3-24-30	462,044	155	2,980	15,338,177
3-31-30	513,269	161	3,188	15,851,446
4- 7-30	748,815	171	4,380	16,600,261
4-14-30	771,856	181	4,264	17,372,117
4-21-30	711,552	195	3,648	18,083,669
4-28-30	776,650	197	3,942	18,860,319
5- 5-30	892,604	212	4,210	19,752,923
5-12-30	752,163	219	3,434	20,505,086
5-19-30	830,915	229	3,628	21,336,001
5-26-30	923,138	247	3,737	22,259,139
6- 2-30	737,387	262	2,814	22,996,526
6- 9-30	808,841	272	2,973	23,805,037
6-16-30	790,117	278	2,832	24,595,484
6-23-30	791,397	301	2,629	25,386,381
6-30-30	809,981	314	2,579	26,196,862
7- 7-30	620,852	329	1,887	26,817,714
7-14-30	558,303	340	1,642	27,376,017
7-21-30	525,614	350	1,501	27,901,631
7-28-30	519,197	370	1,403	28,420,828

(Here follow charts I and II, side folios 185 and 186)


Production - Bbls.
Time in Weeks
50
100
150
CHART - I
Average Well
Oklahoma City Pool
W.P.H. 9/26/30

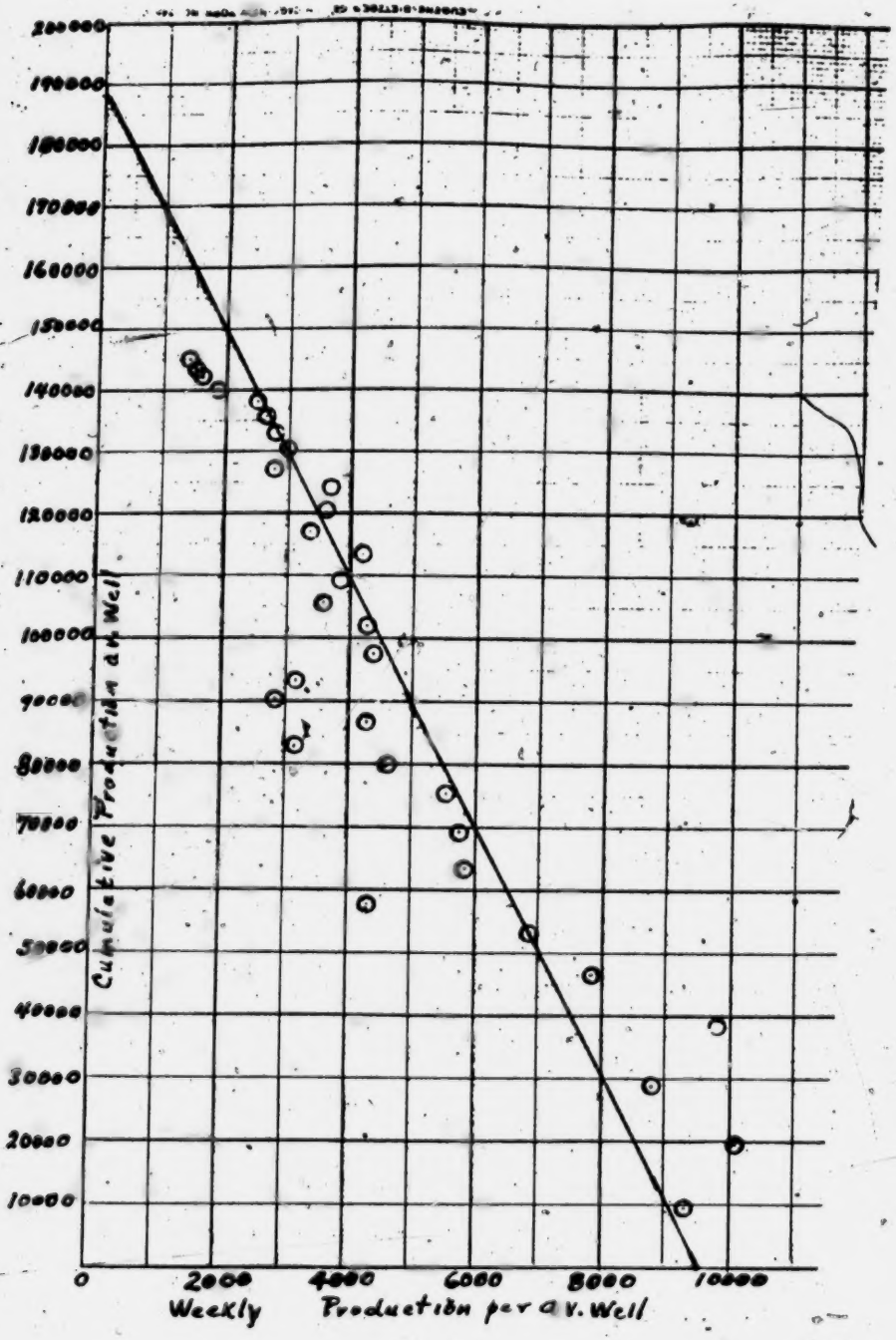

Cumulative Production a Well
0
2000
4000
6000
8000
10000
Weekly Production per a v. Well

Chart 2

[fol. 187] AFFIDAVIT OF E. G. WILMOTH ON BEHALF OF PLAINTIFF-APPELLANT

That he resides at Enid, Oklahoma, and is and has been at all times herein mentioned in the employ of the Champlin Refining Company, complainant herein; that it has been his duty to supervise the laying of an oil pipe line from a point near Lovell, Oklahoma, to the Oklahoma City oil field, which connects with the pipe line belonging to the Champlin Refining Company running from Lovell to its refinery at Enid, Oklahoma; that said pipe line is now completed to the Oklahoma City field and is connected to the oil wells of complainant in said field and also connected to its tankage; that said line is an 8 inch line and has a capacity of 18,000 barrels per day and the tankage constructed by said Company near its wells in the Oklahoma City field is one 80,000 barrels tank and two 5000 barrels tank, in addition to the usual lease stock tanks which have a capacity of about 4500 barrels to each well, and that there is completed in the field belonging to said Company two wells.

Affiant further states that said pipe line, and the tankage, are of the most modern type and constructed and especially designed to prevent waste, all of which is new and just finished and ready for use.

Affiant further states that the 80,000 barrel tank above mentioned was completed on the 7th day of September 1930, and the pipe line was completed to the Oklahoma City field wells on the 22nd day of September, 1930.

Affiant further states that as soon as said 80,000 barrel tank was ready to receive oil said company ran into said tank approximately 42,000 barrels of crude oil which runs were stopped when the wells were shut in and, as this affiant is informed and believes, said wells were shut in by order of the Corporation Commission to the Company.

[fol. 188] AFFIDAVIT OF G. E. LEVERTON, INTRODUCED ON BEHALF OF THE PLAINTIFF-APPELLANT

G. E. Leverton states that he is the Auditor for the Champlin Refining Company, plaintiff herein.

That he has been such Auditor for the last seven and one half years, and has had experience as an auditor and public accountant covering a period of fifteen years.

He has made the attached compilation which is marked "Exhibit A" for identification, being a statement of intrastate and interstate sales of refined products and crude oil of the Champlin Refining Company, plaintiff herein, from the period beginning July 1st, 1928, and extending to December 1st, 1930; that the time prior to July 1st, 1928, was not covered for the reason that the Champlin Refining Company suffered a fire which destroyed its office and records, and the figures were not available.

The statement hereto attached contains a summary of the entries of such shipments made by and under the supervision of this affiant at the time such products were manufactured, sold and handled by the Refining Company, and such figures are correct, and disclose correctly the shipments of the products therein named as such shipments actually occurred.

Exhibit "A" to the Affidavit of Leverton

[fol. 189] Statement of Intrastate and Interstate Sales of Refined Products and Crude Oil

	Sales within Oklahoma		Sales interstate		Total sales	
Last 6 months 1928:	Gallons	Barrels*	Gallons	Barrels*	Gallons	Barrels*
Gasoline	10,295,556	245,132.29	40,564,356	965,818.00	50,859,912	1,210,950.29
Kerosene	2,479,265	59,030.12	6,263,546	149,132.05	8,742,811	208,162.17
Fuel Oils	17,467,492	415,892.65	6,920,882	164,782.92	24,388,374	580,675.57
Lubricants	380,434	9,057.95	1,174,473	27,963.64	1,554,907	37,021.59
Total Refined	30,622,747	729,113.01	54,923,257	1,307,696.61	85,546,004	2,036,809.62
Crude Oil	.....	3,635.41	.....	.....	.....	3,635.41
Total for 6 mos. 1928	.....	732,748.42	.....	1,307,696.61	.....	2,040,445.03
12 months 1929:						
Gasoline	22,218,491	529,011.69	68,395,474	1,628,463.66	90,613,965	2,157,475.35
Kerosene	4,597,736	109,469.90	11,433,334	272,222.23	16,031,070	381,692.13
Fuel Oils	44,320,138	1,055,241.38	24,987,514	594,940.81	69,307,652	1,650,182.19
Lubricants	1,209,217	28,790.88	3,203,521	76,274.31	4,412,738	105,065.19
Total Refined	72,345,582	1,722,513.85	108,019,843	2,571,901.01	180,365,425	4,294,414.86
Crude Oil	.....	463,328.27	.....	50,510.55	.....	513,838.82
Total for 1929	.....	2,185,842.12	.....	2,622,411.56	.....	4,808,253.68
11 months 1930:						
Gasoline	17,538,389	417,580.69	67,580,115	1,609,050.36	85,118,504	2,026,631.05
Kerosene	2,879,997	68,571.35	11,976,689	285,159.26	14,856,686	353,730.61
Fuel Oils	24,306,703	578,731.02	20,560,877	489,544.69	44,867,580	1,068,275.71
Lubricants	1,953,410	46,509.77	5,156,473	122,773.15	7,109,883	169,282.92
Total refined	46,678,499	1,111,392.83	105,274,154	2,506,527.46	151,952,653	3,617,920.29
Crude Oil	.....	816,029.21	.....	.....	.....	816,029.21
Total for first 11 months 1930	.....	1,927,422.04	.....	2,506,527.46	.....	4,433,949.50
Grand Total	149,646,828	4,846,012.58	268,217,254	6,436,635.63	417,864,082	11,282,648.21

*Barrel of 42 Gallons.

[fol. 190] AFFIDAVIT OF F. C. WENTWORTH ON BEHALF OF PLAINTIFF-APPELLANT

That he is Field Superintendent for the Champlin Refining Company; that he has been engaged in oil field work for twenty-three years; that he had charge of drilling the Champlin wells in the Oklahoma City field, two in number, the first of which was finished on August 19, 1930, and the second on August 26, 1930; that the first well, on test, produced 4400 barrels of oil and approximately 80,000,000 cubic feet of gas, and the second produced, on test, 6000 barrels of oil and approximately 50,000,000 cubic feet of gas; that both wells are now shut in awaiting the outcome of court proceedings.

[fol. 191] RAY M. COLLINS testified on behalf of plaintiffs-appellants as follows:

I am the same Ray Collins who executed an affidavit on behalf of the State, which has been used in this case. I draw a salary of $2,000.00 a month as Umpire of the oil fields in the State of Oklahoma, which is paid by all of the producers with the exception of the four or five who are against proration. It is paid in proportion to the amount of oil that is being run out of the field. I was appointed by the Corporation Commission of the State of Oklahoma. The Champlin Refining Company does not contribute anything to my salary. I was recommended to the Corporation Commission for the position by a group of men calling themselves the "Operators' Committee." I have had that position off and on since October 1926. My office is at Tulsa. I have a number of agents and employees, which are necessary to operate the office as directed by me. These men receive their salary from the same source. Otto Bradford is one of these men. He has under him certain agents who operate in the Oklahoma City field who receive their salaries from the Oklahoma City operators. The Champlin Refining Company does not pay any of his salary. The State of Oklahoma does not pay any of the salaries.

The gauges in the Oklahoma City field and the gauges in the other fields in Oklahoma which are taken from time to time are taken in the manner which is stated in the Corpo-

ration Commission orders. The gauges are taken by the operators themselves. The gauge is verified by producers on the leases offsetting the one that is being gauged. They have their men on the tanks and verify the gauge. I make the official report of the gauges to the Corporation Commission every month.

In response to questions by Judge Robert L. Williams the witness testified that long before they had proration some 15 years ago the Corporation Commission had wells gauged and had reports made but that he could not say how the wells were gauged 15 years ago; that the Corporation Commission kept records of the gauge of each well taken years ago.

The witness testified as follows: My agents and employees do not take these gauges. The gauges are made by private individuals who report to my office or to Otto Bradford. I appointed a superintendent on each lease as witness to the gauge who is in each instance an employee of the company that is operating the well, and the report is sometimes made verbally and sometimes made in writing.

Q. In so far as the other operators in the field who are not adjacent to these particular leases they have nothing to do with the gauging of the wells, do they?

A. Yes, sir.

Q. In what way?

A. They are witnesses of the gauges on the lease that offsets their lease.

If a well comes in the man that owns the offset well, or his representative, verifies the gauge made by the owner of the [fol. 192] well. One is a check on the other. I do not know how the Oklahoma City pool has been handled in every case. In all the other fields I send out a written letter stating the gauges are to be taken on a certain date. We do not take all of the gauges in the Seminole field and all of the wells on the same date. We do not give everybody in the Seminole field a notice every time we are going to gauge each well. In a pool we are going to gauge I notify all the operators in the pool with the exception of when a connected well is to be gauged. If a well comes in during the period between gauges and that well is to be put on proration then I notify

offset owners only. When I gauge the Seminole pool as a whole I notify the operators of the pool. I mean by pool, the wells in the pool. We have something like 15 or 16 pools. We call the Oklahoma City pool here one pool. If the gaugers start taking the entire pool of Oklahoma City they are all to be notified. We have not had to do that up to the present time because the Oklahoma City pool has been on a time basis. The Oklahoma City pool is gauged regularly by the operators themselves. The owners of the Seminole wells are not notified of the intention to gauge a well in the Oklahoma City field and the owners of leases in the Oklahoma City field are not notified when a gauge is to be taken in the Seminole field. Dissatisfied operators have never asked for the re-gauge of a pool. They have asked for one or two wells to be re-gauged, which we have done.

We have not attempted in the Oklahoma City field to notify a well owner who does not offset a well that is to be gauged that the well is to be gauged. In the other pools all the operators in the pool are notified that the gauges are to be taken on a date and are notified to witness offset gauges. They are not told to witness a gauge half a mile away or in any other field.

We have been able to tell what the potential of the Oklahoma City field is pretty well. Mr. Bradford has been attending to the Oklahoma City field. He is under me but at the same time I have given him the entire charge of the field. I have been in the Oklahoma City field a good deal of the time but I have not kept up with Bradford and his work in that field in the way I should.

Cross-examination:

I have just tried to carry out what the Corporation Commission has ordered me to do. In the Oklahoma City field up to the present the orders have been on the time proration basis and not on a percentage or potential basis. The only element in which the potential became proper is to be considered at all was in considering the probable amount of time. No producer has been excluded from contributing to my salary. The Champlin Refining Company was asked to contribute. The general scheme was that any person who had production was invited to come in and pay his proportionate part. I do not know that anyone ever objected to

my appointment as Umpire. I was appointed by the Corporation Commission and the appointment was approved by the Governor. My men and Mr. Bradford were so appointed and approved.

[fol. 193] Redirect:

Time proration is that we allow a man to open his well for 30 minutes or an hour and run so many barrels an hour. It is not necessarily true that the first 30 minutes run of one of the flush wells in the Oklahoma City field will produce more oil than the last 30 minutes or the last 10 hours run. In the old field that is true. Under our rules and instructions a party was allowed to open his well for a certain number of hours. Formerly he could divide that up into such hours as he wanted to take. Since December 12th he has to take his time all at once. Before that time he could divide his own time allowance to suit himself.

The distribution of the funds by which salaries were paid was first handled by The Pure Oil Company, then by the Barnsdall Oil Company and later by the Carter Oil Company.

[fol. 194] OFFERS IN EVIDENCE

The order of the Corporation Commission No. 5189, entered in Cause No. 10,146 of date June 30, 1930, was introduced in evidence on behalf of plaintiff-appellant. This order appears as Exhibit "A" to the Second Amended and Supplemental Bill of Complaint and reference is thereto made for its contents.

The order of the Corporation Commission No. 5292, entered in Cause No. 10,146 of date August 30, 1930, was introduced in evidence on behalf of plaintiff-appellant. This order appears as Exhibit "B" to the Second Amended and Supplemental Bill of Complaint and reference is thereto made for its contents.

The order of the Corporation Commission No. 5292, entered in Cause No. 10,146 of date August 30, 1930, was introduced in evidence on behalf of plaintiff-appellant. This order modifying the order of the same number and same date appears as Exhibit "B-1" to the Second Amended and

Supplemental Bill of Complaint and reference is thereto made for its contents.

The order of the Corporation Commission No. 5337, entered in Cause No. 10,146 of date September 30, 1930, was introduced in evidence on behalf of plaintiff-appellant. This order appears as Exhibit "C" to the Second Amended and Supplemental Bill of Complaint and reference is thereto made for its contents.

The order of the Corporation Commission No. 5369, entered in Cause No. 10,326 of date of October 28, 1930, was introduced in evidence on behalf of plaintiff-appellant. This order appears as Exhibit "D" to the Second Amended and Supplemental Bill of Complaint and reference is thereto made for its contents.

[fol. 195] The order of the Corporation Commission No. 5413 entered in Cause No. 10,326 on December 30, 1930 was introduced in evidence on behalf of plaintiff-appellant. The order is in words and figures as follows:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326. Order No. 5413

In the Matter of the Application of WIRT FRANKLIN for Rules and Regulations to be Established by the Commission to Prevent Waste of Petroleum in the Producing Oil Fields of the State of Oklahoma

Order Extending and Modifying Order No. 5369

Comes now petitioner herein and various and sundry producers of oil in the State of Oklahoma, and this matter having been set for hearing on this 29th day of December, 1930, and the Commission having heard and considered the evidence of the petitioner and sundry other persons, and the evidence of any and all persons opposing the supplemental petition herein, and the Commission having made an investigation of the facts alleged and of the conditions in the oil fields of Oklahoma, and being fully advised in the premises, finds as follows:

(a) That areas to be covered by the rules and regulations herein prayed for are all of the oil producing areas in the State of Oklahoma and those new sands or areas which

may be brought into production during the months of January, February and March, 1931.

(b) That notice by publication on all persons or classes interested in this proceeding and in the rules and regulations to be established hereby has been given, as required by law, in a newspaper of general circulation in this State, and that, in addition, reasonable notice in writing has been served personally on all persons, firms and corporations known to petitioner to be interested in this proceeding and due proof of service of notice has been made and filed herein.

(c) The Corporation Commission finds from the evidence that there is an overproduction of crude oil in the State of Oklahoma attended by waste of gas and of gas pressure and that the producers of crude oil in the oil pools of Oklahoma are threatening to and will, unless restrained by the rules and regulations of the Corporation Commission, commit physical waste of crude oil, economic waste, underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands, and that the commission of such waste is so imminent in each of the areas involved in this proceeding that orders, rules and regulations of this Commission are necessary in order to prevent such waste.

The Commission further finds that there is a general overproduction and importation of crude and refined pe- [fol. 196] troleum in the United States, and that this fact tends to reduce the amount of crude oil that can be produced in the State of Oklahoma without waste; that the potential production of crude oil in the United States is at this time approximately 10,000,000 barrels per day, and imports of crude and refined petroleum aggregate about 300,000 barrels per day, thus creating a total possible current supply of 10,300,000 barrels per day as against an approximate daily demand for domestic use and export of 2,500,000 barrels per day. That by reason of this great over-supply and threatened waste, potential production is now being curtailed in Oklahoma and other producing regions, and unless there is a continuance of curtailment of production in the areas involved herein, there will be an increase in waste in this State and an undue exhaustion of

our oil resources. The Commission finds that this petroleum situation constitutes a grave state emergency and that the laws of the State of Oklahoma and the powers of the Corporation Commission should be availed of to remove the same.

(d) The Commission further finds from the evidence that, in addition to the excess of potential and actual production and imports over current demand, there are stocks of petroleum on hand in the United States aggregating more than 670,000,000 barrels, which stocks are excessive and beyond the needs of the petroleum industry. That by reason of the excessive supply thus indicated, the purchasers of crude oil in Oklahoma are unwilling to purchase crude oil in Oklahoma for storage purposes in any amount that would be adequate to take care of the surplus of potential production over current demand and that, therefore, there is not sufficient empty tankage available to take care of said excess and unless production in Oklahoma is curtailed, much oil would necessarily go to earthen storage where it would evaporate and escape and thus be wasted.

(e) The Commission finds from the evidence that in order to curtail the production of crude oil in Oklahoma in a manner to prevent the commission of waste and to protect the coequal rights of producers in each pool, it will be necessary to enforce proportionality of taking from the wells and leases in each of the pools where the potential production thereof exceeds the reasonable market demand therefrom, and that unless such proportionality is required, injustice would be done as between producers in the same pool in that drainage would occur from the less active leases or wells to the more active leases or wells, and an undue proportion of the gas pressure would be utilized by some operators to the detriment of others and unfair discrimination would arise as between pools.

(f) The Commission further finds that the rated potential daily production of crude oil from the wells in Oklahoma during the month of January, 1931, is and will be approximately 6,252,219 barrels and that during the months of February and March, 1931, the said rated potential daily production will be 6,686,564 barrels and

7,263,077 barrels respectively, and that the daily demand for crude oil from Oklahoma during the months of January, February and March, 1931, will range between 465,000 barrels per day in January, which the Commission estimates as the probably demand, and 506,095 bbls. per day, which is the maximum potential demand, as hereinafter explained, and that in the month of February the estimated probable demand is 469,000 bbls. per day, with a maximum potential demand of 506,550 bbls. per day, and in March the probable demand will be 470,000 bbls. per day, with a maximum potential demand of 500,010 bbls. per day. Said distinction between probable demand and maximum potential demand arises from the uncertainty of the market outlet from what is known as the [fol. 197] "Class A" pools, as described in the Order of October 28, 1930. The Prairie Oil & Gas Co., having announced that it would withdraw as a purchaser of oil on Jan. 1, 1931, if said withdrawal is carried out it would leave the demand from the "Class A" pools at 175,905 bbls. per day, approximately, but if said "Class A" pools could re-establish their market it would potentially be approximately 217,000 bbls. per day in the month of January, and this same relative difference between the demand as now appears probable and that which might possibly be established would account for the difference in the total statewide demand as above referred to. That therefore, and by reason of the facts found in this order, the potential production from each of the pools and classes of pools involved in this proceeding is so far in excess of the reasonable market demand that the full potential production cannot be produced without waste.

The Commission further finds that if no restraint were placed upon producing wells or wells now completed or upon wells hereafter drilled during the months of January, February and March 1931, the potential production of the State of Oklahoma would be much greater than that above stated and would exceed all transportation and marketing facilities and reasonable market demands to such an extent as to force large quantities of oil into earthen storage in this State and otherwise cause waste of a character prohibited by the laws of the State of Oklahoma. In order to prevent such waste, the Commission finds that

it is necessary to curtail the production from the pools in this State and each of them during the said months of January, February and March, 1931, and according to the subjoined schedules showing the classes of pools to be prorated, the potential production of each, the estimated daily production of each under proration and the resulting total production, under proration, for the said three (3) months' period:

	Estimated potential	Maximum potential demand	Estimated probable demand
January:			
Class A	247,000	217,000	175,905
Oklahoma City	5,388,298	85,000	85,000
Outside	616,921	204,095	204,095
Total State	6,252,219	506,095	465,000
February:			
Class A	248,295	213,615	176,175
Oklahoma City	5,838,804	90,000	90,000
Outside	604,465	202,825	202,825
Total State	6,686,564	506,440	469,000
[fol. 198]			
March:			
Class A	239,646	210,646	180,636
Oklahoma City	6,411,459	90,000	90,000
Outside	611,972	199,364	199,364
Total State	7,263,077	500,010	470,000

[fol. 199] Suggested Potential and Allowed Production of Crude Oil, State of Oklahoma

Proration Schedule, January 1, 1931, to March 31, 1931

(Except Class A and Class H Pools)

	January		February		March	
	Estimated potential	Estimated production	Estimated potential	Estimated production	Estimated potential	Estimated production
Class B:						
Allen (Wilcox)	6,704	3,352	6,369	3,185	6,051	3,026
Allen (Cromwell)	16,534	8,267	16,038	8,019	15,557	7,779
Bowlegs	25,399	12,700	24,637	12,319	23,898	11,949
Earlsboro (proper)	26,239	13,120	25,452	12,726	24,688	12,344
Earlsboro (Townsite)	9,475	4,738	9,001	4,501	8,551	4,276
Little River	45,841	22,921	45,466	22,733	44,102	22,051
East Little River	21,265	10,633	20,202	10,101	19,192	9,596
Marshall-Lovell	3,658	1,829	3,548	1,774	3,442	1,721
Maud	5,316	2,658	5,157	2,579	5,002	2,501
Mission	12,664	6,332	12,284	6,142	11,915	5,958
Sasakwa	8,169	4,085	7,761	3,881	7,373	3,687
Searight	11,156	5,578	10,821	5,411	10,496	5,248
Seminole	25,816	12,908	25,042	12,521	24,291	12,146
East Seminole	3,651	1,826	3,541	1,771	3,435	1,718
St. Louis	36,294	18,147	35,705	17,853	34,634	17,317
Sub total	258,181	129,094	251,024	125,516	242,627	121,317
Class C:						
Carr City	42,014	12,184	40,035	11,642	44,163	12,625
South Earlsboro	28,175	7,044	25,358	6,340	22,822	5,706
Sub total	70,189	19,228	65,393	17,982	66,985	18,331

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	January		February		March	
	Estimated potential	Estimated production	Estimated potential	Estimated production	Estimated potential	Estimated production
Class D:						
Konawa	67,590	12,673	65,211	12,227	61,950	11,616
Class E:						
East Earlsboro	36,466	15,000	34,643	15,000	32,911	15,000
West Asher-Wanette	53,777	7,200	58,588	7,200	61,659	7,200
West Seminole	11,373	3,000	10,236	3,000	10,236	3,000
Wewoka	40,000	4,000	40,000	4,000	60,000	4,000
Sub total	141,616	29,200	143,467	29,200	164,806	29,200
Class F:						
Tatums	37,000	4,500	35,000	4,500	32,000	4,500
Chandler	25,600	2,500	34,320	2,500	23,104	2,500
Sub total	62,600	7,000	59,320	7,000	55,104	7,000
Class G:						
West Perry	1,675	600	1,500	600	1,400	600
Orlando	3,671	400	3,300	400	3,000	400
Twp. 20N-R.4W	1,400	400	1,250	400	1,100	400
Sub total	6,746	1,400	6,050	1,400	5,500	1,400
Wildcat wells:						
New Wells (outside of Okla. City)	5,000	500	5,000	500	5,000	500
Free production for testing	3,000	3,000	5,000	5,000	5,000	5,000
Unprorated small wells in prorated areas	2,000	2,000	4,000	4,000	5,000	5,000
Total	616,921	204,095	604,465	202,825	611,972	199,364

[fol. 200] (g) The Commission finds that the order numbered 5369 and the rules and regulations adopted October 28, 1930, should be continued in force for the first quarter of 1931 as modified by this order and by such supplemental or ancillary orders as may be made by the Commission from time to time. In this connection, the Commission finds that it is characteristic of the oil producing business that the reasonable market demand and the potential production of oil pools sometimes change abruptly and frequently and it is therefore necessary that the order, rules and regulations be made sufficiently flexible to permit prompt readjustments of allowable percentages of production in order to conform the permitted production to the reasonable market demand. For these reasons the Commission would request everyone interested and instruct the umpire and operators' committees to promptly advise this Commission of such changes in order that proper ancillary or supplemental orders may be made. The purpose of the Commission is to recognize fully the reasonable market demand for each pool and not to curtail production below such demand where the transportation or marketing facilities are adequate but to allocate such market demand ratably among the producing leases therein in proportion to the potential production of each lease to the end that the coequal rights of the producers may be protected and the waste incident to the production of oil in excess of the transportation or marketing facilities or the reasonable market demand may be prevented.

(h) The Commission finds from the evidence that the curtailment and the varying percentages as between pools prescribed in the schedules contained in paragraph (f) herein are necessary and reasonble in order to reduce production in this State to the reasonable market demand and in a manner least injurious to the producers and royalty owners as a whole, and in order to prevent unfair and unreasonable discrimination in favor of any one pool or common source of supply as against another.

The Commission finds that the varying percentages of curtailment as between pools as set forth in paragraph (f) of this order are necessary, fair and reasonable because of the peculiar conditions in each case and in this, to-wit: that said pools are not all served in common by the same

pipelines and purchasers; that the reasonable market demand from certain of them is greater in proportion to potential production than in the case of others; that some of them are older than others and have been prorated longer than others, under orders of the Corporation Commission with a consequent greater reduction in potential flow and smaller possible production per well per day and are, therefore, accorded a higher percentage allowable production; that in may cases individual pools are served by local purchasers whose facilities cannot be extended to the others, and in certain of the pools the sand and water conditions prevent as great curtailment as is possible in others, and that in certain pools there is a more intensive drilling campaign and wells of larger capacity than in others. The Commission also finds that in the making of said schedule in paragraph (f) the producers and purchasers in all of said pools were consulted and meetings of said producers and purchasers were held at which all of the foregoing factors were considered and that said schedule represents the consensus of opinion of said producers and purchasers as to reasonableness of arrangement, necessity and convenience of producers and purchasers and equity as between the various common sources of supply under present circumstances.

The Commission finds that the basis of classification of [fol. 201] pools for the application of the varying percentages of curtailment as shown by the schedule in paragraph (f) herein is the existing relation between the potential production of each pool and the amount of crude oil which can be produced from said pool without waste. That because said relation is not the same in all the pools involved, the percentages of curtailment must necessarily vary as between pools. A uniform percentage applied to all pools would result in the permitted production from some of them being less than the reasonable market demand therefrom, while in others the permitted production resulting from such uniform percentage would exceed the amount which could be produced therefrom without waste.

(i) The Corporation Commission further finds that in addition to the prevention of waste of crude oil, the establishment of the curtailment plan in this order set forth will

tend to conserve natural gas and gas pressure in the pools to which it shall be applied.

(j) The Commission further finds from the evidence that the best manner of applying curtailment of said "Class A" pools, is as follows, to-wit: That in each of said "Class A" pools all leases therein where the per well average per day is ten barrels or less should be exempted from curtailment or proration because to curtail or prorate said ten barrel well or wells making less than ten barrels would be to reduce the output therefrom in many cases below the point of practical operation and thus compel their abandonment which would constitute a waste of an irreplaceable natural resource, and for the further reason that many of such wells produce water along with the oil and it is necessary to pump them each day in order to prevent their injury by water encroachment. That in each of said "Class A" pools each lease should receive said exemption up to an average of ten barrels per well per day but in the case of those leases where the average per well exceeds ten barrels per day, the excess should be curtailed 50% so that, for example, an 80 acre lease with 8 wells thereon which is making a total of 100 barrels per day should be curtailed and prorated so that it would receive an exemption of 80 barrels and the remaining 20 barrels of potential should be cut to 10 barrels, so that the total allowable production from such lease would be 90 barrels per day. In this manner the Commission estimates that the production from the "Class A" pools will be curtailed to the reasonable market demand therefrom.

(k) The Commission finds that the full potential production from the Oklahoma City pool cannot be produced without waste, including physical waste and waste incident to the production of crude oil or petroleum in excess of the reasonable market demand, and that the reasonable market demand from said pool at the present time, and during January, 1931, is and will be approximately 85,000 barrels per day, and that in the month of February, 1931, said reasonable market demand from said pool will be approximately 90,000 barrels per day, and that in the month of March, 1931, the reasonable market demand from said pool will be 90,000 barrels per day, and that the market demand herein named is subject to increase and the Commission

therefore finds that the orders, rules and regulations should [fol. 202] be made sufficiently flexible so that increases or decreases in market demand from said Oklahoma City pool and increases or decreases in potential production therefrom, can be recognized by ancillary orders of the Commission, and that for this purpose the Umpire and Operators' Committee should be instructed to compute from time to time, the rate of curtailment necessary in order to conform the permitted production to the reasonable market demand from the said Oklahoma City pool and to report the same to the Commission with the facts in support thereof as a basis for such ancillary order; it being understood, however, that whatever reasonable market demand develops for crude oil from the Oklahoma City pool shall be prorated among all the producing wells therein, so that each well or lease will be permitted to produce its proportionate share of the amount of oil that may be produced from said field without waste.

The Commission further finds that if an increased reasonable market demand should be asserted the permitted production from the Oklahoma City pool could be increased in a substantial and corresponding amount without discrimination as against other pools.

The Commission finds from the evidence that crude oil and natural gas occur together, or in close proximity to each other in the ground, and that there is a common gas pressure throughout a common pool which exerts an energy or force to move the gas and oil toward the point of least resistance, and that therefore when wells are drilled into a pool or structure the oil and gas become migratory, and, having the power of self transmission, will move from one property to another, underground, in such pool; and that when some of the wells in such a common pool are permitted to produce at a greater proportion of their capacity than others, drainage occurs from the less active to the more active wells, if such disproportionate condition is continued; that in the Oklahoma City pool there is a heavy gas pressure which would cause such drainage should disproportionate taking of crude oil and gas be permitted; that the history of the oil producing business in this and other surrounding states shows that in the case of flush pools where proportional taking from the wells is not enforced, and

where the full production from the pool cannot be taken, either because of inadequate transportation facilities or because the reasonable market demand does not equal the potential production, producers who do not have physical or market outlets will be forced to produce their well to capacity in order to prevent drainage of the oil to the wells of such producers as do have adequate physical or market outlets. In such cases, in the absence of adequate steel storage available to every producer, some of them will flow the oil into earthen pits. This has occurred many times in the oil pools in Oklahoma and surrounding states and has always caused actual physical waste of the crude oil through evaporation, leakage, and washouts to a very large extent. The Commission finds that this would be the case in the Oklahoma City field, and in many other fields of the state if production were not curtailed as provided in this order.

The Commission further finds that to permit the wells in the Oklahoma City field to flow wide open and continuously, or disproportionately and without limitation as to time, would cause serious underground waste.

The Oklahoma City operators have petitioned this Commission for permission to change the method of proration [fol. 203] in said pool from the time basis to the basis of percentage of daily potential production and this Commission's rules and regulations with reference thereto are embodied in a separate supplemental order this day issued. Proration of the Oklahoma City pool has heretofore been on the time basis because the operators requested it and because there was no practicable way of taking accurate gauges as a basis for proration by the percentage of potential method, there being no facilities for handling the oil that would be produced while the gauge was being taken. But the Commission now finds that a reasonably accurate gauge of potential production may now be taken and that under the circumstances as they now exist percentage proration would be better for the field in regard to reducing the possibility of waste and more equitable as between producers.

(1) The Commission finds that the potential production of the State of Oklahoma now so far exceeds the reasonable market demand from said State as a whole, and the re-

sulting curtailment of producing wells has become so drastic and severe, that it would be inequitable and unfair and discriminatory to hereafter permit full production from wild-cat wells hereafter drilled which open new pools, sands or zones, and the Commission therefor finds that all wild-cat wells or wells opening new pools, sands or zones completed or brought into production after the date of this order should be limited to a production of 50 barrels per well per day, after one day open flow for test, and until otherwise ordered by the Corporation Commission.

The Corporation Commission further finds that the allegations of the supplemental petition filed herein are true and correct, and that accordingly these conditions of waste now exist in said pools, and commission of waste is imminent, and the same should be prohibited and prevented, and the following rules and regulations are necessary, reasonable and appropriate for that purpose.

It is therefore ordered by the Corporation Commission or the State of Oklahoma as follows:

1

The areas to be subjected to the rules and regulations of the Corporation Commission are all of the oil pools in the State of Oklahoma, and such new pools, sands or zones as may come into production during January, February and March, 1931,

2

Ray M. Collins is hereby appointed as Umpire and Agent of the Commission to enforce the rules and regulations herein made and he is hereby authorized to employ as many assistants as he shall deem necessary.

3

Where percentage proration is applied a gauge of producing wells shall be taken in the following manner: the gauge to determine potential shall be taken by each operator in the pool in respect of the lease or leases owned by him therein and then producing, such gauge to be taken between the hours of seven A. M. on the day set by the Order of the [fol. 204] Commission, and seven A. M. on the following

day. Prior to the taking of such gauge and in respect of each producing lease covered hereby the Umpire shall appoint a representative of an operator owning a lease adjoining the particular property to be gauged, and shall notify the operator whose property is to be gauged of the name of the representative, such notification to be given prior to the taking of such gauge. It shall be the positive duty of such representative to remain on the lease that is being gauged throughout the entire day that the gauge is being taken to witness the gauging of the production therefrom; and immediately upon the completion of such gauge, such witness and the operator whose property was gauged shall file a written statement with the Umpire showing the production of said lease, and of each well thereon for the day said gauge is taken. The production so shown shall constitute the potential for said lease until the next gauge is taken. During the time this Order is in force a similar gauge of each property shall be taken from time to time as the Umpire and Operators' Committee may designate but not less than once each month. Such open gauges shall be taken in the following pools: Wewoka (Section 30 and Townsite), East Earlsboro, South Earlsboro, Section 29-9-6 (West Seminole), the flush wells in the Carr City pool located in Sections 2 and 3, Twp. 8, Range 5, and the flush wells in the Tatums pool.

On the basis of open gauges heretofore taken in East Little River, Konawa, West Asher-Wanette, Earlsboro Townsite and Sasakwa, the potential production shall be declined 5% per month until further order of the Commission. On the basis of gauges already taken of the Wilcox sand wells of the Allen Pool, the potential shall be declined 3% each month, with the exception of the Sinclair-Cully 'A' Lease, Blackwell Fleet lease and the Texas-Lewis lease, which shall be declined 5% per month, and the Texas-Dinah lease, which shall be declined 10% per month; all other wells in the pools of the Greater Seminole Area shall be declined 3% a month.

4

Each person, firm or corporation having the right to drill into and produce oil from any of the flush or semi-flush

pools or areas and extensions thereof that are covered by this Order may take from such pool or area and extension thereof only such proportion of all crude oil and petroleum that may be produced therefrom under this Order as the production of the well or wells of such person, firm or corporation in said pool or area bears to the total potential production of such pool or area. In the case of each such pool or area the Umpire and the Operators' Committee for said pool or area shall report from time to time any changes in potential production or reasonable market demand so that this Commission may change the percentage allowable to equal the reasonable market demand.

5

Where shortages and overages have occurred under previous orders of this Commission, the same shall be carried forward and adjusted during the month of January, 1931. Any lease showing an average of one barrel or more at February 1, 1931, or at the first day of any month thereafter during the life of this Order shall be immediately reported by the Umpire under oath to the Corporation Commission as a basis for citation and such report shall contain in addition to the location of the property and the amount of the overage, the names and addresses of the [fol. 205] lessee, the purchaser of the oil and the transporter. Leases which are being gauged according to a decline curve and showing a shortage at the end of any month of more than two days allowed production shall take as their potential for the following month the daily average production of the last ten days of the month. And in the case of such leases, shortages of two days allowable production or less shall be credited on the next month's allowed production.

6

To establish equality between producing wells and drilling wells, each well now drilling in any of said areas, or which may be commenced in said areas or in any new areas prior to March 31, 1931, shall take a delay prior to being brought into production, equal to the accumulated shut-in time and accumulated equivalent time resulting from pinching of producing wells from the beginning of the proration

period in each pool, said period of delay to be computed in each instance after allowing seven (7) days for the cement to set: Provided the maximum shut-in time in each of said pools shall be according to the following schedule:

Area	No. of days cement to set	No. of days of open flow for test	Days shutdown
Oklahoma City	7	8 hours	57
East Earlsboro	7	1 day	41
Konawa	7	1 day	16
West Asher-Wanette	7	1 day	16
Marshall-Lovell	7	1 day	16
South Earlsboro	7	1 day	16
Seminole, et al	7	1 day	16

Previous orders of the Corporation Commission as to wells now completed but not on production shall be continued in effect as to the shutdown requirements therein. Wildcat wells hereafter completed and opening new pools, sands, or zones shall have one day of open flow for test and thereafter the production therefrom, together with that from subsequently completed wells therein, shall be pinched in to 50 barrels per well per day until further order of the Corporation Commission. A wildcat well shall be considered as one outside of a pre-existing drainage area.

7

That all purchasers and pipeline carriers of oil in the State of Oklahoma be and they are hereby forbidden to aid or abet producers in violating this Order.

8

Attention of the producers in each pool is hereby directed to Section 7959, Compiled Oklahoma Statutes, which provides that any person, firm or corporation may institute proceedings before the Corporation Commission or apply for a hearing upon any question relating to the enforcement of the conservation laws. In this connection, producers in each of the pools in Oklahoma are invited to appear before the Commission at any time that they may deem themselves peculiarly injured by the administration of this order in any particular or in any manner discriminated against, and the Commission will hear and act upon the evidence disclosed in such hearing. Notice should be given to the Umpire and Operators' Committee of the in-

[fol. 206]

tention to thus appear before the Commission on any such question.

9

Class A Pools: All oil pools in the State designated as "Class A" pools shall be prorated in the following manner. All leases in said pools which have a potential production in excess of an average of 10 barrels per well per day shall be curtailed 50% of the excess over such 10 barrels per well per day average. In all leases in said pools an exemption from proration of an average up to 10 barrels per well per day shall be allowed. The following is an illustration of what is intended by this regulation, to-wit: an 80-acre lease with 8 wells thereon which is making a total of 100 barrels per day will be allowed an exemption of 80 barrels and the remaining 20 barrels will be cut to 10 barrels so that the total allowable production from the lease as a whole will be 90 barrels. The pipe lines and purchasing companies are hereby directed to observe and enforce this regulation in said "Class A" pools and to assist the Umpire and Operators' Committee in carrying out the requirements hereof.

10

Class B Pools: The following semi-flush pools shall be placed in "Class B", to-wit: Allen (Wilcox), Allen (Cromwell), Bowlegs, Earlsboro (proper), Earlsboro Townsite, Little River, East Little River, Marshall-Lovell, Maud, Mission, Sasakwa, Searight, Seminole, East Seminole and St. Louis.

These pools shall be curtailed in the following manner: Allowed production, 50% of potential production with this qualification—that in the case of any lease not capable of making in excess of 50 barrels per day, it shall be allowed an exemption of 10 barrels per well per day and the curtailment of 50% shall only be applied to the excess over an average per well of 10 barrels per day.

11

Class C Pools: The following pools shall be placed in "Class C", to-wit: Carr City pool with its new extension and South Earlsboro pool. These pools, to recognize the market outlet and to conform to the peculiar conditions

therein shall be curtailed according to the following schedule:

Average barrels per well per lease:

300 barrels or more, allowed production	25%	
200 to 300 barrels, " " "	30%	not over 75 Bbls.
100 to 200 " " "	37½%	" " 60 "
Less than 100 bbls, " "	50%	

Also, in these pools where a lease is not capable of making more than 50 barrels per day, there shall be allowed an exemption of 10 barrels per well per day as in "Class B".

[fol. 207] 12

Class D Pools: Konawa Pool. There being no other pool in the State in similar position to that of Konawa, it is placed in a class by itself and shall be prorated on the following schedule:

Average barrels per well per lease:

400 barrels or more, allowed production	18¾%	
300 to 400 barrels, " "	22½%	not over 75 bbls.
200 to 300 " " "	26¼%	" " 67 "
100 to 200 " " "	37½%	" " 53 "
Less than 100 barrels, " "	50%	

Also, in this pool, leases not capable of making over 50 barrels per day shall be granted an exemption of 10 barrels per well per day as in "Class B".

13

Class E Pools: East Earlsboro, West Asher-Wanette, West Seminole (29-9-6), and Wewoka (Section 30 and Townsite). Owing to the changing relation between the potential production and the market outlet from these pools, it is ordered that each of them be limited in production to a stated figure representing the present market outlet which, in the case of the East Earlsboro pool, is 15,000 barrels per day, and in the case of the West Asher-Wanette pool is 7,200 barrels per day, and in the case of the West Seminole (20-9-6) pool is 3,000 barrels per day, and in the case of the Wewoka (Section 30 and Townsite) pool is 4,000 barrels per day. And that the Umpire and Operators' Committee be required to ascertain and compute from time to time the percentage of potential production

which may be allowed to conform the permitted production to the market outlet and to report the same to the Corporation Commission as the basis for an ancillary order. But in these pools the 10 barrel per well exemption in leases not capable of making in excess of 50 barrels per day shall apply as in "Class B".

14

Class F Pools: Tatums and Chandler Pools. Both of these pools have new extensions with potentially large wells along with old, small wells. Having in view the present market outlet from these pools, it is ordered that they be curtailed in the following manner:

Wells with a potential daily production of 400 barrels or more shall be allowed 100 barrels daily. Wells with a daily potential of from 100 barrels to 400 barrels shall be allowed 50 barrels per day. Wells with a daily potential production of less than 100 barrels shall be allowed an exemption of 10 barrels per day and be curtailed 50% of the excess over 10 barrels.

Provided: That the Umpire and Operators' Committee shall from time to time, make a survey of the market outlet from each of said pools and in case the market demand increases, this fact, together with suggested changes in the percentage of allowable production, shall be reported to the Commission as the basis for an ancillary order.

[fol. 208] 15

Class G Pools: West Perry, Orlando and Township 20 North, Range 4 West. These new pools of unascertained possibilities are now being curtailed on the basis of the following maximum allowed output which shall be continued until otherwise ordered by the Commission, to-wit:

West Perry	600 barrels daily.
Orlando	400 " "
Twp. 20 R., 4W	400 " "

16

Class H Pools: The Oklahoma City pool. The Corporation Commission temporarily nominates for the Oklahoma City pool an outlet of 85,000 barrels per day in January, 1931, 90,000 barrels per day in February and 90,000 barrels

per day in March. This nomination of the total permitted production of the pool shall serve as a basis for fixing the proportional production of the wells in said pool until the Commission finds from evidence that a greater or less reasonable market demand obtains. On the basis of the potential production of the field now reported to the Commission of 5,388,298 barrels per day, the temporarily nominated outlet of 85,000 barrels per day will require a proportional taking of 1½% from the potential production of each well or lease. This percentage shall be put in effect at 7 A. M. January 3, 1931, but the Umpire and Operators' Committee are directed to immediately begin the taking of gauges in said field according to the supplemental order this day issued and to compute the percentage of allowable from time to time as found necessary to conform the permitted production to the reasonable market demand, and to report as soon as possible their findings to the Commission as a basis for an ancillary order revising such permitted percentage. Any person interested in said pool may also report to the Commission any evidence of the need for a changed percentage. All orders heretofore issued applicable to the Oklahoma City pool, and now in force and effect, are hereby extended in full force and effect until 7:00 A. M. January 3, 1931. From and after said date and hour the percentage of allowable production herein fixed for the Oklahoma City pool shall be applied according to and as modified by Order No. 5413 this day issued which applies to the Oklahoma City pool alone.

It is further ordered that whatever reasonable market demand from the pool shall exist at any time shall be prorated and allocated among all the producing wells and leases, so that each well or lease shall receive its prorata share of the reasonable market demand, and the pipeline companies are hereby directed to cooperate with the Umpire in so arranging pipeline connections that there shall be no discrimination in favor of one producer and against another.

17

The Commission will, in separate order, name for the various pools embraced within the terms and provisions of this Order, Operators' Committees for each of said respective pools and territories embraced herein. This will be

necessary for the reason that the law requires the approval of His Excellency, the Governor of the State of Oklahoma, in the appointment and designation of such officials. [fol. 209] The Order #5369 of October 28, 1930, shall be continued in force for the period Jaunary 1, 1931, to and including March 31, 1931, except as modified by this and other supplemental and ancillary orders of the Commission. Jurisdiction of this cause is hereby retained by the Corporation Commission, and notice is hereby given that supplemental and ancillary orders may be made herein from time to time as required by new developments and as instructions to the Umpire and Operators' Committee. When in the judgment of the Umpire or any Operators' Committee any adjustment or fixing of percentages of well production as provided in this order shall be proper, or as any such supplemental or ancillary order shall become necessary, the facts supporting the necessity therefor and the reasonableness thereof shall be reported to the Commission for approval, and no exception to those rules and regulations shall be allowed by the Umpire or Operators' Committee, nor shall any adjustment of percentages or well production become effective, unless approved by such an ancillary order of this Commission. Should the demand for crude oil from the State of Oklahoma increase prior to March 31, 1931, to such an extent as to permit a greater outlet from the pools herein mentioned, the Umpire shall report the facts to the Commission, together with the recommended percentages, and the Corporation Commission hereby gives notice that such revised percentages may be substituted for the percentages provided for in this order.

Done at Oklahoma City this the 30 day of December, 1930.

Corporation Commission of Oklahoma. —— ——, Chairman. Fred Capshaw, Commissioner. E. R. Hughes, Commissioner.

Attest: E. D. Hicks, Jr., Secretary.

[fol. 210] The verified Answer of Defendants to Second Amended and Supplemental Bill of Complaint was introduced by the defendants-appellees as an affidavit on their behalf. Reference is here made to said answer for its contents.

[fol. 211] The affidavit of Ray M. Collins, introduced on behalf of the defendants-appellees, states:

1

That he is a citizen of the State of Oklahoma and a resident of Tulsa County in said State, and that he is the Ray M. Collins mentioned by the Champlin Refining Company in its Second Amended Bill of Complaint in the above entitled cause, and that he is and has been for more than two years last past the Umpire appointed and re-appointed by the Corporation Commission to attend to the administrative details of enforcing the curtailment and proration orders made and promulgated by said Corporation Commission from time to time for the purpose of preventing waste of crude oil and petroleum in the State of Oklahoma. That he is the Umpire who was appointed to execute the orders of the Corporation Commission involved in said above entitled cause and numbered 5189, 5246, 5292 and 5369 and other orders supplemental thereto, and is still serving in said capacity.

2

Affiant further says that he has been a producer of crude oil in the State of Oklahoma for the past twenty-five (25) years, and that he has had personal and direct charge of drilling for and producing crude oil in said State, and, as such producer, is well acquainted with the art and science of drilling for and producing crude oil in all of the oil fields in Oklahoma including the Oklahoma City pool and the Greater Seminole Area. That affiant further says that he is not personally interested in the production of crude oil or gas or in the transportation or marketing thereof in or from any of the oil wells in the State of Oklahoma, production from which is now or heretofore has been curtailed by the orders of the Corporation Commission above referred to but is only interested in a few very small, old wells of a class excluded from curtailment by orders of the Commission for reasons therein stated and affiant therefore states that he is not interested in any of the prorated fields in the State.

Affiant further states that, as such Umpire, he has always officiated directly and solely by reason of his appointment as such Umpire by the Corporation Commission and in pursuance of the orders of said Commission and not as agent of any oil operator or group of oil operators functioning or attempting to function in the proration or curtailment of oil fields in any other manner than under and by virtue of the authority of the orders of said Commission. Affiant further states that he is well acquainted with Otto B. Bradford and with the members of each of the Operators' Committees which have functioned in the curtailment and proration of oil pools in Oklahoma, as named and mentioned in the Second Amended Complaint of the Champlin Refining Company, and that he knows the manner of their appointment and states the fact to be that each and all of them were appointed by the Corporation Commission by orders duly entered by said Commission in its records, including the said Otto B. Bradford, who was also appointed by this affiant as his assistant in the Oklahoma [fol. 212] City field by and with the consent of the said Corporation Commission. Affiant further states that the said Operators' Committees served without compensation and were appointed by the Corporation Commission because of their well known ability and peculiar fitness as advisors to the Umpires and to the Corporation Commission in the execution of the conservation orders, and not because they were affiliated or employed by any particular oil producing company. That neither this affiant nor the said Otto B. Bradford was at the time of appointment as Umpire employed by any of the persons, firms or corporations named in the complainant's Complaint, nor by any other oil producing concern interested in any of the said prorated fields, nor was either of said Umpires so employed immediately prior to their appointment, or since their appointment, but have derived their compensation as such Umpire solely from a common fund voluntarily created by the operators interested in the flush and semi-flush pools under proration and duly apportioned or assessed proportionately upon all of the operators interested in said prorated fields according to production, and that this was done because there were no available state funds with which said Umpires could be paid.

4

Affiant further states that he was present at the great majority of all meetings held by operators called to consider the proration of said fields, and was present at each of the hearings before the Corporation Commission which resulted in the promulgation by the Commission of the orders involved in this suit and that, furthermore, he is familiar with the manner and method by which the orders of the Commission were drawn, and states that none of said orders was drawn by the agents, employes or servants of the competitors of the Champlin Refining Company, but affiant states that said orders and each of them were drawn by counsel for the petitioner who filed the petitions before the Corporation Commission upon which said hearings were held, and by the attorney for the Corporation Commission, and that said counsel, at the conclusion of the evidence in each of said hearings, submitted a draft of a proposed order to the Corporation Commission, in open court, as a suggested journal entry of the order to be then made by the Commission based upon the evidence adduced at the hearing, and that thereafter said orders, as amended by the Corporation Commission, were promulgated by the Commission as its orders and rules and regulations in each instance.

5

Affiant further states that he heard the evidence presented upon which each of said orders was based, and that he is familiar with the facts and circumstances of their issuance and enforcement, and states that each of said orders and rules and regulations therein contained were designed and intended to prevent the waste of crude oil and petroleum in the oil pools of the State of Oklahoma, including the Oklahoma City pool and the Greater Seminole Area, and to protect the co-equal rights of the producers in each pool, and were not designed or promulgated for the purpose of fixing prices of petroleum. That during the four years last past curtailment and proration have been in effect in Oklahoma and for nearly all of said time under orders of the Corporation Commission, and during said period the price of crude oil in Oklahoma, responsively to world conditions, has declined approximately 50% from its former level.

Affiant further states that he was familiar with the operating conditions in the Oklahoma City pool and the Greater Seminole area and other prorated pools of the State immediately prior to the issuance of the Order No. 5189 on June 30, 1930. That it was the duty of this affiant and the said Otto B. Bradford, in their respective fields, to superintend the taking of the gauges of the wells and to observe and record the results of the open flow tests provided for in the orders of the Corporation Commission in force prior to the order of June 30, 1930, and since said time, and this affiant says that, on said June 30th, the potential production from the wells in the Oklahoma City field then in existence and which had been tested and which would then be permitted to produce under the orders of the Corporation Commission, aggregated 600,000 barrels per day; that at said time the physical pipeline outlet from the said field did not exceed 160,000 barrels per day, and the total market outlet from the field, that is, the amount which purchasers would purchase from said field, including the amounts which the producers themselves sought to take and use, did not exceed 100,000 barrels per day; that, therefore, had no order been made curtailing the output from said field and enforcing proportional taking, but all of the wells had been permitted to produce to capacity, such production would have far exceeded all transportation and marketing facilities and reasonable market demands, and, by reason of the absence of adequate storage facilities much of said oil, under said circumstances, would necessarily have gone into open earthen storage where it would have been physically wasted through evaporation, leakage and overflow, and many oil properties without pipeline or market outlet would have been drained by others possessing such outlets. That in the Greater Seminole Area at said time, the potential production of all the wells then completed and ready to produce aggregated 486,945 barrels, and the total market demand from said area aggregated 252,962 barrels, and that if there had been no curtailment or proration of production from said Greater Seminole Area, waste incident to the production of oil in excess of the reasonable market

demands from said pool would have occurred, including that arising from open earthen storage, and the co-equal rights of the producers in the oil and the common gas pressure would have been violated, and that a similar condition of excess of potential production over market demand and danger to the co-equal rights of producers existed at said time and still exists in each of the pools included in the orders of June 30, 1930; July 24, 1930; August 30, 1930; October 28, 1930, and in other orders ancillary and supplemental thereto.

Affiant further states that he was familiar with the operating conditions in the Oklahoma City pool and the Greater Seminole area and other prorated pools of the state immediately prior to the issuance of the Order No. 5369, on October 28, 1930, and orders supplemental thereto. That it was the duty of this affiant and the said Otto B. Bradford, in their respective fields, to superintend the taking of the gauges of the wells and to observe and record the results of the open flow tests provided for in the orders of the Corporation Commission in force prior to the order of October 28, 1930, and this affiant says that, on said October 28th, the potential production from the wells in the Oklahoma City field then in existence and which had been tested and which would then be permitted to produce under the orders of the Corporation Commission, aggregated approximately 2,800,000 barrels per day, [fol. 214] that at said time the physical pipeline outlet from the said field did not exceed 160,000 barrels per day, and the total market outlet from the field, that is, the amount which purchasers would purchase from said field, including the amounts which the producers themselves sought to take and use, did not exceed 132,000 barrels per day; that, therefore, had no order been made curtailing the output from said field and enforcing proportional taking, but all of the wells had been permitted to produce to capacity, such production would have far exceeded all transportation and marketing facilities and reasonable market demands, and, by reason of the absence of adequate storage facilities much of said oil, under said circumstances, would necessarily have gone into open earthen storage where it would have been physically wasted through evaporation, leakage and overflow, and by reason

of disproportionate operation of wells in said field, much otherwise recoverable oil would have been wasted by being left unrecoverable in the underground reservoir. That, in the Greater Seminole area at said time, the potential production of all the wells then completed and ready to produce aggregated 520,248 barrels, and the total market demand from said area aggregated only 195,040 barrels, and that if there had been no curtailment or proration of production from said Greater Seminole area and other pools mentioned in said order, waste incident to the production of oil in excess of the reasonable market demands from said pools would have occurred, including that arising from open earthen storage as well as underground waste and a disproportionate use of the common gas pressure, and that a condition of excess of potential production over reasonable market demand existed at said time and still exists in each of the pools included in the orders of June 30, July 24, 1930, August 30, 1930, October 28, 1930, and orders supplemental thereto, and that proration was necessary to protect the co-equal rights of producers therein.

7

Affiant further states that preceding the issuance of each of said orders there was filed before the Corporation Commission a verified petition by a resident producer of oil in the State of Oklahoma, setting forth the facts of overproduction and threatened waste in the oil pools of said State and praying that a hearing be granted and that the order, rules and regulations of the Corporation Commission be formulated and promulgated for the prevention of such wastes and the protection of the co-equal rights of the producers; that in each such instance, said petition was set for hearing by the Corporation Commission and notice given by publication and by personal service, setting the time and place of such hearing and that the notice was issued and published and personally served five days prior to each of said hearings; that at such hearings evidence was taken and an opportunity afforded to any one interested to protest and to offer evidence and that at said hearings proof of publication and service of said notice was made and thereafter the orders referred to were issued by the Corporation Commission.

Affiant further states that at the time of the issuance of the Order No. 5189 on June 30, 1930, the potential production of crude oil in the United States from wells then in existence was in excess of 4,730,000 barrels per day and that imports of crude oil and refined petroleum then currently amounted to some 300,000 barrels per day, thus creating, in addition to stored oil, a current supply totaling 5,030,000 barrels per day as against an approximate [fol. 215] daily demand for domestic use and export of 2,840,000 barrels per day. That at said time there was in storage in the United States crude and refined petroleum in the amount of 698,000,000 barrels which stocks were excessive and beyond the needs of the petroleum industry and by reason of said fact, the purchasers of oil were unwilling to purchase oil in Oklahoma for storage or otherwise in excess of their current requirements. That such an overproduction and excessive storage and the consequent disinclination to purchase for storage aforesaid still continues. That at said time the potential production from the wells in Oklahoma then ready to produce was approximately 1,362,000 barrels per day and the total demand from Oklahoma did not exceed 650,000 barrels per day; that the excess of potential production over consumption from the State of Oklahoma was 712,000 barrels per day for which excess there was no market outlet and no adequate storage facilities, and if said excess should then have been produced, it would necessarily have gone into open, earthen storage in large amounts. That at the time of the issuance of Order No. 5246 on July 24, 1930, the potential production from the State of Oklahoma had increased to 1,400,523 barrels per day, while the market demand from said State had decreased to 500,000 barrels per day, leaving an excess of potential production over market demand of 850,523 barrels per day for which there was no market outlet and no adequate storage facilities and if said excess had been permitted to be produced, it would have unavoidably — into open, earthen storage in large amounts; that on August 30, 1930, when said Order No. 5292 was promulgated, the potential production of crude oil in the State of Oklahoma was 1,481,118 barrels

per day, while the market demand from said state at said time was only 500,000 barrels per day, thus leaving an excess of potential production over market demand of 931,118 barrels per day, for which there was no market outlet and no adequate storage facilities, and if said excess had been permitted to be produced it would have unavoidably gone into open, earthen storage in large amounts. That on October 28, 1930, when Order No. 5369 was issued the potential production from Oklahoma had increased to 3,638,478 barrels per day while the reasonable market demand from said state had remained at 550,000 barrels per day, leaving an excess of potential production over market demand of 3,088,478 barrels for which excess there was no market outlet and no adequate storage facilities, and if said excess had been permitted to be produced it would have unavoidably gone into open, earthen storage in large amounts. That at the present time the potential production from the wells in Oklahoma is approximately 6,000,000 barrels per day and the total market demand is approximately 465,000 barrels per day; that the excess of potential production over market demand is approximately 5,535,000 barrels per day for which excess there is no market outlet and no adequate storage facilities, and if said excess is permitted to be produced it will unavoidably go into open, earthen storage in large amounts. That open, earthen storage involves a serious and definite physical waste of crude oil.

9

Affiant states that the usual and customary method of gathering and marketing crude oil from the oil pools of Oklahoma and elsewhere in this country and including the Oklahoma City pool and the Greater Seminole Area is and at all times herein mentioned has been as follows:

[fol. 216] Purchasing companies buying for their own account or for account of others make arrangements with producers of oil to take the oil from their wells and to pay for same at the mouth of the well the prevailing market price as posted or offered from time to time by the principal purchasers for that grade and quality of oil. Authority to take such oil is evidenced by what is termed a "division

order'' setting forth the terms of the arrangement and the respective interests of the persons owning the production. Companies engaged exclusively in gathering and transporting oil by pipeline extend their systems into such pools as have a market demand for the oil and connect to all of the wells whose owners desire a connection and who have a market outlet for their oil. These pipeline systems or companies are common carriers and do not themselves purchase oil but will gather and transport it for any producer or purchaser who has a place to deliver it on the line and who will tender it in amounts and according to rules and regulations and tariffs in effect. Interstate carriers are under supervision of the Interstate Commerce Commission as to tariffs and rules and regulations. Intrastate carriers are under state supervision. Seven great pipeline systems enter the Oklahoma City field and offer their services to any and all producers and purchasers and a similar number, although not of the same identity in every instance, enter and serve the Greater Seminole Area. In addition there are smaller and more local pipelines serving each of said pools or fields. These several pipeline systems, in addition to reaching local markets, reach all of the principal markets for crude oil, north, south and east of said pools and some of them extend to the Gulf of Mexico and to the Great Lakes and, with connections, reach the Atlantic Coast. Each and every producer in said pools including the Champlin Refining Company, Oils Incorporated, Marco Petroleum Company, Century Petroleum Company and the Capital Producing and Refining Company, who, in this proceeding, have alleged that they have demands or offers to buy their oil, are at liberty to use said pipeline systems and/or any other available transportation facility, and to transport to any purchaser or point of delivery their respective ratable proportions of the reasonable market demand for oil in said fields.

The power of the Corporation Commission and the activities of this affiant are exerted to prevent the production of oil in excess of either transportation or marketing facilities or reasonable market demand, in order to prevent waste incident to any such excess production. No effort has been made to limit the reasonable market demand or to

limit production below the reasonable market demand. It was intended by each order of the Corporation Commission that if the reasonable market demand for the oil in any field should increase at any time this fact was to be reported to the Commission so that the new and additional market demand could be recognized and allowed by a revision of the percentages of potential production to increase the allowable output accordingly, so that all the producers in such field could enjoy the right to participate on a ratable basis in such increase.

Offers to purchase which are made to individual producers in any of said fields for amounts in excess of the permitted production from the wells of such producers should not be recognized by the Commission because same cannot be prorated or distributed prorata among all the producers in the field and the only effect of recognizing them would be to permit the offeree to produce his or its wells out of proportion or to a greater percentage of capacity than others, and thus injure their neighbors by drainage and disproportionage use of the gas pressure and defeat the intent and purpose of the Conservation Statute. [fol. 217] Also, it is characteristic of large new flush pools that one or several local refiners such as the complainants herein will drill one or more wells on small tracts and run a private pipeline to such well or wells and then demand the privilege of producing their well or wells to capacity while others are curtailed, because, as they allege, they need the oil for their refinery and will not physically waste their oil. Although there is an abundance of oil available for purchase they assert that as refiners and marketers of refined oils they are entitled, as an aid to their refining business, to disregard proration as producers and to produce their wells to capacity notwithstanding the fact that such action on their part will result in drainage of neighboring properties or force adjoining owners to flow their oil into earthen storage to avoid drainage.

The facts in this paragraph set forth constitute a true description of the Oklahoma City field and its surroundings as they now exist and as they have existed during the time the orders complained of were in effect.

Affiant further states that the gas pressure in the Oklahoma City pool is very great and for this reason should the complainants to this and companion cases be permitted by

injunction of this court to flow their wells during the pendency of this and companion cases, the damage to other producers and to the pool as a whole through drainage, dissipation of gas pressure and waste would be immeasurably greater than any injury that could possibly happen to complainants in this and companion cases from obeying the orders of the Commission along with other operators pending the final decision in said cases. The effect of an injunction against enforcement of the orders as to complainants would be to give them an unconscionable advantage over other producers in the same pool in that the complainants would be thus enabled to draw hundreds of thousands of barrels of crude oil from under the leases and lands of adjoining and adjacent owners and to convert the same to the use of complainants to the irreparable damage and injury of said other producers. That the proceeds of the amounts of oil which complainants could thus drain from their neighbors would pay all fines and penalties which could be assessed under the laws of Oklahoma for violation of the orders and would leave complainants a large profit.

10

Affiant further states that the curtailment of production, as applied by said orders in each of the pools covered thereby, applies equally to each of the producers in each of said pools, respectively, so that no advantage is given by the operation of the plan of conservation to any one operator over another. And that the rules and regulations and their enforcement are designed to prevent unfair advantage to one operator over another and to prevent drainage from one oil property to another, to prevent underground waste of oil and to prevent injury by water encroachment or otherwise.

Affiant further states that he is familiar with the experience of the operators in the Oklahoma City pool and in the Greater Seminole area under said orders and that according to said experience, extending over a year in the Oklahoma City fields and other three years in the Greater Seminole area, there is no evidence that the wells, which have been subjected to curtailment either by temporary shutting down or by pinching in, have suffered damage. [fol. 218] That with reference to water encroachment,

affiant states, that temporarily shutting down or pinching in of the wells in said oil pools does not cause water encroachment but that water encroachment is more certain to occur and will sooner occur where the wells are permitted to flow to capacity continuously and for a considerable length of time, and affiant says, it is his opinion based upon his knowledge of the facts and experience that the wells of the Champlin Refining Company in the Oklahoma City pool and in the Greater Seminole area and those of the Marco Oil & Royalty Corporation, the Century Petroleum Corporation, Capitol Refining Company, and the Oils Incorporated have not been damaged by the enforcement of the orders of the Corporation Commission and that they will not be damaged by a continuance of the application of said orders or similar regulations so long as said wells are treated and curtailed in the same manner as other wells in the pools in which they are respectively located.

11

Affiant states that the duties of the said Umpires and of the Operators' Committees in executing the said orders of the Corporation Commission were and are ministerial only, and that neither the said Umpires nor the said Operators' Committees made or attempted to make any rules or regulations or orders for the curtailment of the production from any of the wells in any of said pools, nor were said Umpires and Operators' Committees vested with any discretion, but that the manner in which said orders of the Commission were executed was as follows, to-wit: The said Umpires and Operators' Committee- observed the operation of the wells in each of the pools, said Umpires superintended the taking of gauges and recorded the results of open flow tests, and advised the operators, from time to time, of the contents and requirements of the orders of the Commission and if any operator failed or refused to comply with said orders, the said Umpires reported the name of such operator, and the facts attending his violation of the order, to the Corporation Commission for action by the Commission itself. That by said orders the said Umpires and Operators' Committees were expressly forbidden to change any of the provisions of the orders, rules and regulations but were required to report to the Commission any change of conditions within any pool which, in the

opinion of the said Umpires, might require a modification of the order or a change in the percentages of potential production allowed in any of said pools. Affiant further states that with reference to the fixing of any percentage of potential in any pool, the duty of the Umpires and Operators' Committees consisted solely in making a mathematical calculation of the known market outlet in said pools and the known potential production of the wells, from which two factors it required only a mathematical calculation to ascertain the percentage of potential production that each well in the pool would be permitted to produce in order that the total production from the pool should equal the market demand from said pool; and when such mathematical calculations were made by the said agents, Umpires and Operators' Committees, they were reported by said Umpires in each instance to the Corporation Commission, which Commission thereupon, and upon consideration of the evidence, made and issued its supplemental or ancillary order requiring the enforcement of such percentage.

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Affiant further states that, under said orders of the Corporation Commission, the Champlin Refining Company and [fol. 219] the other companies named in paragraph 10 of this affidavit, had not been required to shut down their wells except for limited periods and under the same conditions and for the same periods of time that other producers in the same pool or pools were required to shut down. That under the orders as applied to the Oklahoma City field, each new well, on being completed, is required to shut down for a period of fifty-seven (57) days, and that the reason for this rule is as follows, to-wit: That the Oklahoma City pool as a whole has been curtailed and prorated since about the 15th day of September, 1929, at which time the wells then in existence were all completely shut down for thirty (30) days by voluntary action of the operators; that at the conclusion of said period of voluntary shut-down, and from and after November 1, 1929, the said pool was curtailed and prorated, under orders of the Commission, upon what is known as the "time" basis, whereby the wells were divided into classes and each class was permitted to produce for a certain length of time, and was then required to shut down while another class produced for an equal length of time.

This arrangement was necessary by reason of the fact that, if all the wells in the pool had produced at the same time, the pipeline, transportation and marketing facilities would have been wholly inadequate to take care of and handle the production. During the time from January 1, 1930, each well has been required to shut down fifty-seven (57) days upon completion. In this manner the wells in the Oklahoma City pool which preceded in point of time the wells of the said named companies, have an accumulated shut-in time ranging from 57 days to over 200 days each and, under the existing orders, the wells of the said named companies must likewise shut down for 57 days in consideration of the time their competitors' wells have been shut down. Affiant states that the said companies having only recently completed their respective wells in the Oklahoma City field, are the beneficiaries of the shut down requirement rather than its victims, because if all of the wells in the Oklahoma City pool which preceded them during the past year had been permitted to produce continuously and to capacity, they would have depleted the gas pressure and drained the oil out from under the leases of said companies to a vastly greater extent than has occurred under the orders of the Commission. This is especially true since the wells of said companies are located on small town lots.

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Affiant further states that in the making of the rules and regulations contained in their orders, the Corporation Commission classified the oil pools of the State of Oklahoma and applied percentages of curtailment in the flush and semi-flush pools upon the basis of the relation between the market outlet and the potential production in each pool. That this necessarily caused different or varying percentages of curtailment to be applied to the various pools because the relation between the market demand and the potential production was not the same in each of said pools and, if the Commission had applied the same or uniform percentage of curtailment in all of the prorated pools, it would have resulted in the production of some of the pools being cut down far below their natural and actual and reasonable market demand, so that persons desiring to purchase oil from said pools would have been denied and prevented from

so doing, while in the case of other pools, the amount of production allowed by such uniform percentage would have been far in excess of the market outlet from said pools and waste would have occurred. The various pipelines in the State of Oklahoma do not all connect with all of the oil pools, nor do all of the purchasers of crude oil in Oklahoma [fol. 220] desire to purchase crude oil from all of the oil pools. Some of the purchasers and pipelines have no pipeline connections or other transportation facilities in the Oklahoma City pool or in the Greater Seminole area and that, therefore, the market outlet of each pool is to a certain extent local.

Affiant further states that there are certain oil settled oil pools in the State of Oklahoma which prior to the order of October 28, 1930, were not included in curtailment orders of the Corporation Commission but in which pools the wells were permitted to produce to 100% of their capacity. That with reference to said old pools not curtailed prior to October 28, 1930, the Corporation Commission found in its orders, and affiant states the fact to be, that said pools and each of them had, at the time of the issuance of said previous orders, adequate pipeline and market outlets equal to the potential production of said pools and each of them, and that waste of crude oil was not then imminent in said pools; that also, in said unprorated pools there were some 60,000 old, small wells scattered over the state and in such a situation as to present great difficulty of administration of any curtailment plan that might be applied to them. Affiant further states that the majority of said wells are so small that to curtail their production would be to reduce their gross income below the cost of operation and thus probably to compel their abandonment and their loss as a natural resource. That the average production of said 60,000 old, small wells was and is only approximately four (4) barrels per well per day, and that in the case of 30,000 of them, their average is only about one (1) barrel or less per day, as contrasted with the daily average production per well in the flush and semi-flush pools of approximately 400 barrels per day and ranging in the case of some wells, up to 90,000 barrels per day. That for these reasons the Corporation Commission excluded small wells from proration in its orders prior to that of October 28, 1930. But

affiant states that in and by its order of October 28, 1930, said Commission found from evidence introduced before it in the hearing upon which it based said order, that by reason of a readjustment of purchases on the part of purchasers of crude oil in said state as between the pools therein not previously prorated and the Oklahoma City pool, the potential production of said previously unprorated pools would exceed the reasonable market demand for oil produced therein, and that it became necessary to prorate said older pools in order to prevent the waste of crude oil therein, and that said older pools which were designated in said order as "Class A" pools were curtailed in their production to the extent of fifty per cent of the excess, in the case of each lease, over and above an average of five barrels per well per day; and that this was done for the further reason that the Commission desired to avoid discrimination as between said Class A pools themselves and as between said Class A pools and the other pools of the state. That in supplemental orders the Commission has raised the exemption in Class A pools from five barrels per well per day to ten barrels per well per day to avoid possible injury to said old small wells an account of water conditions.

Affiant further states that oil and gas are irreplaceable natural resources of the state and while in the ground possess the power of self-transmission by reason of the gas energy which exerts a pressure common to the pool. Any dissipation of the gas pressure or disproportionate use thereof by one operator correspondingly reduces the ability of the remaining producers in the pool to recover their proportionate part of the oil deposit and affiant states that in the case of any pool where the potential production is in excess of the market demand, it is necessary in order to [fol. 221] protect the co-equal rights of all of the producers to extract their proportionate share from the pool, to place upon all of such producers a uniform percentage limitation upon the production of their wells. In other words, where in such a pool some of the operators have pipeline outlets of their own and others do not, unrestrained production by the possessors of the pipeline outlets would lead to drainage by them from producers not so fortunately situated or would compel said less fortunately situated producers to flow their wells into earthen storage or other-

wise commit the waste now prohibited by law. Furthermore, unrestrained production by some operators of their own wells, while the remaining operators who have no pipeline outlet of their own for their oil, keep their wells restrained to their respective shares of the oil taken from the field by common purchasers of oil, would result in the dissipation by the former of the gas energy in the underground reservoir and hence in underground waste of oil which would otherwise be recoverable.

Affiant states that in the enactment of said act effective February 11, 1951, recited in complainant's bill, the Legislature of Oklahoma was dealing not only with a natural irreplaceable resource, but also with a peculiar species of property of vast importance and consequence to the State of Oklahoma as a proprietor and to the economic welfare of the people of said state. Affiant states that oil and gas underground possess characteristics not shared by any other species of property. That the typical oil reservoir in the State of Oklahoma and in the other American states, including the Oklahoma City oil pool and the Greater Seminole oil area, is characterized by the following conditions: (1) Oil and gas exist in the ground in sedimentary rocks, being a porous, sandy strata, or in lime formations, varying in texture and porosity, and these are called oil pools. (2) They exist in their undisturbed state under pressures, often quite high. (3) In said pools both oil and natural gas will be encountered as the occupants of the same reservoir. (4) There will be a quantity of free gas inhabiting the higher portions of the saturated formation, such gas being almost entirely if not completely disassociated from the oil content of said formation, but exerting a pressure throughout the same. (5) In addition to said free gas, large quantities of natural gas will be found in the reservoir dissolved in the oil contained therein, which association between the oil and gas reduces the viscosity of the oil and otherwise tends to increase its mobility so that when the reservoir is penetrated by a well the propensity of the oil to migrate to the opening thus created and to be lifted to the surface is vastly augmented, and as a result of this physical condition oil may be drained from the lands of one oil operator through the well or wells of another operator penetrating the common reservoir. (6) Furthermore, upon the pene-

tration of the reservoir by a well the free gas at the top of the structure functions in such way as to drain the oil originally inhabiting one tract of land to the tract penetrated by the well. (7) The free gas at the top of an oil structure and the gas dissolved in the oil therein constitute what in the oil industry is defined as the "gas energy" of the particular pool, and the gas energy of an oil pool is the chief agency in moving petroleum laterally to a well penetrating the reservoir, and also in lifting it to the surface for recovery for commercial purposes.

That the characteristics of oil and gas hereinbefore mentioned apply to all the oil properties described in complainant's bill, and the pools wherein they are situated. That these characteristics establish a community of interest in the gas energy or pressure of an oil pool between and [fol. 222] among all of the proprietors having rightful access to the particular reservoir, by reason of the fact that should one oil operator therein wastefully or inefficiently or disproportionately use said gas energy or pressure to produce his oil, such use to the extent of such waste or that it is improper, deprives the other oil operators in said pool of the right to recover the quantity of oil from their lands which they might recover if there were no such waste of gas energy or pressure or no inefficient or disproportionate use of the same. Accordingly, the nature of the subject matter dealt with correlative rights and obligations apply to any oil and gas pool. No operator therein should disproportionately use the gas pressure or energy of the pool so as to take from the pool a disproportionate part of the oil content thereof. At the time of the making of the orders referred to, the potential production of the Oklahoma City pool, the Greater Seminole area and the other areas affected by said orders, greatly exceeded in each case, the market outlet from each pool respectively, as is shown on the faces of said orders. The facts last stated demonstrate that it is not possible to market all of the oil production from any of said pools, and particularly from the Oklahoma City pool or from the Greater Seminole area. Complainant states that it is in position to take all of its production both from the Oklahoma City pool and from the Greater Seminole area, but affiant states that not all of the oil operators therein are able to market all of their

production therefrom but only a part thereof, and in the Oklahoma City pool a very small part thereof, and that if complainant shall be permitted to take all of its production from said pools, such action on its part would destroy the community nature of the gas energy in said pools, and in so doing the complainant will be able to produce more than its proportional share of the production from said pools to the destruction of the property rights of the other operators in said pools, and will cause waste; if the complainant shall be permitted to do one of the things designed to be prevented by the statute received in complainant's bill, that is to say, instead of submitting to a proportional taking of oil from each of said pools, each operator thereby being permitted to produce such proportion of the market outlet of the pool as his potential production bears to the potential production of the pool, complainant would be permitted to produce all of its oil to the irreparable detriment of the other operators in each of said pools, by drainnig the oil from their properties and causing them to commit waste by flowing their oil into open, earthen storage because of inadequate market outlets for their oil; or if they failed so to do then complainants would commit waste by its dissipation of the gas energy in the pool for that therefrom great underground waste would result. The said statute was designed to prevent both the evil of the commission of waste and the evil of disproportionate taking on the part of the several operators in a common pool, and thus to prevent the consequences above enumerated growing out of permitting the complainant herein to produce without restraint the oil from its wells in the said pools where there is a grossly inadequate market outlet.

Affiant states that the said act was adopted by the Legislature of Oklahoma in order not only to prevent the waste of crude oil under ordinary circumstances, but also to prevent its waste incident to the production of crude oil in excess of transportation and marketing facilities or reasonable market demands, and affiant states that as is above explained, actual waste of crude oil occurs as an incident to the production of crude oil in excess of transportation or marketing facilities or reasonable market demands, and that additionally, and as an incident to the prevention of [fol. 223] waste under the said circumstances, said statute

had as one of its purposes the protection of the co-equal rights of the several land owners in a common source of supply of crude oil against the taking by any one thereof of an unfair and disproportionate part of the oil content in such common source of supply. In this connection, affiant states that prior to the enactment of said statute and its approval on February 11, 1915, as at all times since its enactment, there were and have been three classes of oil operators in the State of Oklahoma, namely: First, the completely integrated unit which produced, transported, and refined petroleum and marketed the products thereof; Secondly, the quasi-integrated unit which produced, transported and marketed crude petroleum; Thirdly, the unintegrated unit which engaged in the sole business of producing oil. Affiant states that in the years 1905, 1906 and 1907, the Glen Pool in Oklahoma was under active exploitation, and that the three classes of oil operators held producing leases therein; that the integrated and quasi-integrated units produced all the oil that they could produce from their properties, and that the unintegrated oil operators owning production alone, and having no actual market for all their output, were totally unable to produce all of their potential production from said pool. In consequence, by virtue of the nature of the substances involved, the integrated and quasi-integrated units in the oil producing business used more of the gas energy and pressure of the pool than they were entitled to; that an integrated or quasi-integrated oil producer was able to take from his leases all the production therefrom when his neighbor or neighbors, unintegrated producers, were not able to market any oil therefrom, or to market a production therefrom bearing any equitable relation to the quantity taken by said integrated or quasi-integrated producers. That the oil industry of the State of Oklahoma passed through the same experience in the Cushing field in Oklahoma between 1913 and 1915, and in the Healdton field the condition existed of an integrated or quasi-integrated oil producer being able to produce and market all of his production from a particular oil pool, although at the time an adjacent operator or another operator in the same pool was not able to market any or at the most an inappreciable quantity of the production of his wells. As a result of the integrated or

quasi-integrated operators of the State were utilizing a community property, namely, the gas pressure energy of the pools in which they were interested to the fullest possible extent and to the overwhelming detriment of the unintegrated operators in the pool, who, by reason of the action of the integrated producer, were compelled to either submit to drainage or run their oil into earthen storage where it evaporated and wasted. And affiant states that to meet this evil and to establish equality of production during periods of oversupply and otherwise to prevent waste, the act effective February 11, 1915, was enacted.

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Affiant further states that the proportional limitations placed upon the production of the wells of the Champlin Refining Company does not have the effect of preventing the said company from obtaining any amount of oil from the fields to which its pipeline is connected and which it may need for its refinery. Affiant states the fact to be that, if the said Champlin Refining Company desires additional oil, it can obtain it from either the Oklahoma City pool or the Greater Semi[illegible] area by purchase, and in this connection, affiant states that last September he requested the said Champlin Refining Company to take and run from the Greater Seminole area a greater amount of oil than it was taking, but said company refused so to do on the ground [fol. 224] that it did not require any more oil from the said Greater Seminole area or was unable to take it. Affiant further states that, if the Corporation Commission and its agents are enjoined from enforcing said orders against the companies named in paragraph 10 of this affidavit, or any of them, and if, as a result thereof any of them is permitted to produce its wells to capacity in the Oklahoma City pool and in the case of Champlin Refining Company, in the Greater Seminole area while the other producers are required to remain shut down or curtailed by the orders of the Corporation Commission the action of such company in so producing its wells to capacity will have the immediate effect of draining oil and gas from said other wells in said pools to the great detriment and damage of said other producers, and will result in said company obtaining a greater proportion of the oil and gas from the pool where its wells are located, than its just or proportionate share thereof,

and that this would be an irreparable damage to said other producers.

16

With reference to the taking of gauges to determine the potential production of the pools and wells for the purpose of applying proration, affiant states that in the Greater Seminole area and in all pools where, according to the orders of the Commission, proration was applied by pinching in the wells to a certain percentage of potential capacity, open flow gauges were taken, as provided in said orders, by requiring offset owners to witness the taking of said gauges and to verify the accuracy of same. That in addition to notice to and witnessing by said offset owners, all producers in the pool were given notice of the time that gauges were to be taken in the pool as a whole and were afforded an opportunity to witness any and all gauges thus taken. Where only one or two or a very limited number of new wells, coming into production between gauging periods, were to be gauged no general notice to all operators was given but offset owners were notified and required to witness such gauge and a representative of the Umpire also witnessed same.

In the Oklahoma City pool, up to the present time the proration has been on what is known as the "time basis," i. e., instead of pinching in the wells they were divided into classes and each class was permitted to flow to capacity for short intervals while the other classes remained shut down. This procedure was necessary as a temporary expedient because the potential production of the pool as a whole was so large and the gas pressure so heavy that an open flow gauge of all the wells could not be taken without waste since there were no adequate facilities for handling such large quantities of oil as would be produced during the taking of the gauge. But by permitting each well to produce to capacity a percentage of the time the same proportionality of taking was enforced as would have resulted from the other method of pinching the wells in to a certain percentage of potential continuous flow. During the period that "time" proration has been in effect in the Oklahoma City pool accurate individual well gauges have been obtained by observing and recording the results of open flow tests of new wells and the amounts produced by each well from time to time as it

was permitted to flow to capacity under the intermittent or "time" proration method.

By order of the Corporation Commission of December 30, 1930, the operators of the Oklahoma City pool are permitted to change the method of proration from the time basis to the pinched in or percentage basis on January 3, 1921.

[fol. 225] The affidavit of Wirt Franklin, introduced on behalf of the defendants-appellees, states:

1

That he is 47 years of age and has been an oil producer in the State of Oklahoma continuously since 1913, that he is President of the Wirt Franklin Petroleum Corporation, and a large stockholder in and Vice President of the Cromwell-Franklin Oil Company, and that he is in active charge of the management of the said Wirt Franklin Petroleum Corporation which now has eighty-five (85) producing oil wells in the Oklahoma City field in Oklahoma, which wells have a potential capacity of approximately 569,536 barrels per day; that affiant has been producing oil from the Healdton field and from other Oklahoma fields for the last seventeen years and is well acquainted and thoroughly schooled in the art and science of drilling and producing oil wells in the oil fields of Oklahoma and in protecting them from water encroachment and other forms of injury.

2

Affiant further states that he is intimately acquainted with the history of the conservation laws of the State of Oklahoma, to-wit, Sections 7954 to 7963, inclusive, Compiled Oklahoma Statutes, which were enacted as the Act of February 11, 1915. Affiant states that prior to the adoption of said Conservation Act he was producing oil in the Healdton field in Southern Oklahoma, and that he was then and is now and has at all times been what is known as an independent producer; that is to say; he never at any time has had any interest directly or indirectly in any Standard oil Company or in any of the large integrated oil corporations, but for the most of the time has been a producer only with-

out pipe lines or refineries; that he now owns a refinery at Ardmore, together with some small lines leading out to adjacent fields, but that he has no pipe line connecting with the Oklahoma City field where the great majority of his oil interests lie.

3

Affiant states that prior to the enactment of the said Oil Conservation Law, he, with other independent producers in the State of Oklahoma, were producing oil in the Healdton field where there was an overproduction of oil in 1914, and in which field there were certain producers who also owned pipe lines while this affiant and other producers did not have pipe line outlets of their own. There being no law to control the situation, the producers in said field who had pipe lines and storage facilities of their own produced their wells to capacity, although there was not a market outlet for all of the potential production of oil of the wells in the field; that as a result this affiant and other independent producers were compelled to also produce their wells to capacity in order to avoid drainage and the loss of gas pressure. Having no pipe lines or storage tanks into which to run the oil, this affiant and other unintegrated producers ran their oil into open earthen storage in large amounts; affiant states that in many instances dams were hastily constructed across ravines and dry creek beds and the oil was run into such temporary and inefficient storage from which large quantities of it evaporated, much of it seeped away, and finally, a heavy rain came and the oil was carried away [fol. 226] down the creeks and rivers, overflowing farm land and causing many fires, and other forms of loss to the citizens of the vicinity as well as to the oil producers. Affiant states that a similar condition of affairs existed in the Great Cushing Field which at said time also had a potential production far in excess of its market outlet. That in both of said fields those independent unintegrated producers who attempted to hold their oil in the ground suffered irreparable loss through drainage by those producers who did have pipe line outlets and were thus able to produce their wells to capacity. Affiant states that by reason of these facts the independent oil producers of the State of Oklahoma and from all of the fields in Oklahoma held a meeting at which

the fact that waste was thus being committed and the co-equal rights of the independent producers were being violated and destroyed were discussed, and as a result of said meeting said independent producers appeared before the Legislature of the State of Oklahoma which convened in January, 1915, and conducted a hearing before the Oil and Gas Committee of the respective houses of said Legislature extending over a period of more than two weeks; that at said hearing all of the independent producers or their representatives testified in favor of the enactment of the bill then pending and which was finally enacted as the Act of February 11, 1915, but that at said hearing the large integrated companies opposed the enactment of the bill, but the Legislature, in response to the request of the independent producers to prevent waste and to prevent the unfair taking of oil from pools where the full production could not be taken without waste, enacted the said Oil Conservation Act.

4

Affiant further states that he is very familiar with the manner in which orders Nos. 5189, 5246, and 5292 were made by the Corporation Commission and which are now in force in this State. Affiant states that he is the Wirt Franklin who on the 17th day of June, 1930, filed before the Corporation Commission a verified petition setting forth the facts that there was a serious overproduction of crude oil in the State of Oklahoma, and particularly in the flush and semi-flush pools described in said petition, and that the oil producers in said pool were threatening to and would unless restrained by orders of said Commission commit waste of crude oil or petroleum in each of said flush and semi-flush pools, including the Oklahoma City pool, and the Greater Seminole area, and prayed the Commission for a hearing on said petition and that it promulgate its rules and regulations to prevent such waste. Affiant further states that he is the Wirt Franklin who on the 16th day of July, 1930, filed before said Corporation Commission his application for a modification of the order No. 5189 which had been issued by said Commission after a hearing on said original petition, and affiant states that after a hearing on

said application to so modify, the order No. 5246 was issued. Affiant further states that in the filing of each of said petitions he was acting on behalf of himself and other independent oil producers in the State of Oklahoma, and that his action in so doing was not dictated by any of the persons or corporations named in the complaint of the Champlin Refining Company in the above-entitled cause, but the filing of said petitions were the free and voluntary actions of this affiant. Affiant further states that immediately prior to the filing of said petitions and each of them, he caused to be called together all of the oil operators interested in the Oklahoma City pool and invited to said meeting every operator large and small known to him to be in anywise interested in said pool; that said meetings were largely attended, [fol. 227] nearly every operator interested in the pool being present; that at said meetings and each of them this affiant secured a general discussion of the condition of impending waste in said pool and of the question of how waste could best be prevented and the correlative and co-equal rights of the producers at the same time be protected; that at said meetings and each of them the producers, large and small, integrated and unintegrated, unanimously approved this affiant's announced intention to file the petitions which he did file and unanimously agreed that such steps should be taken to prevent waste and that the plan of so doing, as set forth in said petitions, was reasonable and proper and best calculated to prevent injury to any well or to any producer in said field; that at said meetings the question of the practicability and desirability of time proration as distinguished from percentage of daily potential production proration was discussed, and the operators and their petroleum engineers present at said meetings selected and approved time proration for the Oklahoma City field as the most appropriate and least harmful method of curtailing the production from the pool to conform to market outlet.

5

Affiant further states that the plans as thus approved by all of the operators were embodied in said petition and substantially restated and incorporated in the orders which the Corporation Commission after hearing and after the re-

ception of evidence promulgated, and which are now involved in this cause as orders Nos. 5189 and 5246. Affiant further states that while he was not the petitioner in the application which resulted in order No. 5292, the same procedure was followed and the same approval was obtained from the great majority of the operators, large and small, in the Oklahoma City pool.

6

Affiant further states that on October 1, 1930, he signed and there was filed with the Corporation Commission an application for another proration order to cover the months of October, November and December, 1930, which initiated proceedings resulting ultimately in the making of order No. 5369, dated October 28, 1930; but affiant states that he was necessarily absent from Oklahoma during the proceedings which were afterward conducted by the Commission growing out of the filing of his said application, and has not personal knowledge thereof, but he states that prior to the filing of his said application, meetings of operators were held, similar to those hereinabove described, and that he attended said meetings and participated in the deliberations thereat and that there was no dissenting vote cast at said meetings whereat the plan set forth in the orders of October 28, 1930, was agreed upon, and whereat it was agreed that said proposed plan should be submitted to the said Commission for its consideration; that the said meetings were largely attended by producers both large and small, integrated and unintegrated, as was true in the case of the previous meetings hereinbefore referred to.

7

Affiant further states that he has observed the operation of time proration in the Oklahoma City pool for more than a year last past and states that the effect of said plan has not been to hasten water encroachment nor to injure the wells in the field so far as the said wells or wells producing from the same formation are concerned, but affiant be-
[fol. 228] lieves and therefore states the fact to be that the operation of time proration, under the conditions obtaining in said sand formation in said field, has been to retard water encroachment and to protect the co-equal rights of the pro-

ducers in the case of wells producing from the said formation. Affiant states that the wells of the several plaintiffs in the suits which have been brought in the United States Court, that is, the Champlin Refining Company, the Capitol Producing and Refining Company, the Century Petroleum Corporation, the Marco Oil & Refining Corporation, and The Oils Incorporated, are producing from the sand formation above referred to. Affiant further states that he is informed that the Corporation Commission in an order, either entered or about to be entered extending proration in Oklahoma for another three months, has or will direct that said Oklahoma City field be hereafter operated on the percentage basis in accordance with particular terms set forth or to be set forth in such order, and he states that his companies favored the change from time proration to percentage proration for that they believed and believe that the operation of said field hereafter on a percentage basis will be more practical and perhaps more efficient, and that it will protect as effectively as did time proration the coequal rights of producers in said field.

8

Affiant further states that the Oklahoma City pool now contains more than 600 producing wells, many of which are of gigantic potential daily capacity, and that in the underground reservoirs accompanying the oil and associated with it is a heavy gas pressure. Affiant states that if there were not restraint upon the production of wells in said pool the production would far exceed all transportation and marketing facilities, market demands and storage facilities, and that great quantities of oil would necessarily go into open earthen storage, into dammed up ravines, and to other temporary and inefficient receptacles, and a perfect saturnalia of waste would result; that in addition to such a catastrophe the oil producing properties of many independent and unintegrated producers would be severely drained; the gas pressure common to the field would be depleted and the result would be that many producers would never be able to obtain their pro rata share of the oil deposit.

9

Affiant further states that if the Corporation Commission should be enjoined from enforcing the said conserva-

tion orders against the Champlin Refining Company, the Capitol Producing and Refining Corporation, and the Oils Incorporated, or either of them, and the said companies or either of them should thereupon proceed to produce their wells to capacity or in excess of the amount of production that is allowed other wells under said orders the inevitable result would be that the wells of the said companies would drain the oil and gas from under the properties of other producers and the said companies would obtain more than their respective proportionate shares of the oil and gas of the field. That if the enforcement of said orders should be enjoined as to the said companies, the only manner in which the other producers could protect themselves against the drainage above referred to would be to also open their wells to capacity, and when that occurred the condition of waste above described by this affiant would occur. That in addition to the waste and the injury to the correlative rights of the producers as above described the opening up of the Oklahoma City pool to full capacity with all of the [fol. 229] oil and gas wells producing would cause large quantities of oil to go upon the ground and many billions cubic feet of gas to go into the air, great clouds of gas would envelope the field and its environs, including the City of Oklahoma City, and would constitute a great fire hazard which would endanger not only the property on the oil leases but the lives and homes of many people and the welfare of the City of Oklahoma City.

[fol. 230] The affidavit of Glen Grimes, introduced on behalf of the defendants-appellees, states:

That he is 31 years of age and is a geologist by profession; that he is an active member of the American Association of Petroleum Geologists, and received his education in geology at the University of Oklahoma; that he is at the present time Chief Geologist for the Wirt Franklin Petroleum Corporation and the Cromwell-Franklin Oil Company, and has served in that capacity for approximately three years; that as such geologist he is familiar with the Oklahoma City oil pool and with the manner of drilling and producing the oil wells therein, and, is familiar with the facts with regard to the oil wells off-setting No. 1 McCallep of the Champlin Refining Company which No. 1 McCallep

is located in the N. E. ¼ of the N. W. ¼ of the N. E. ¼ of Section 2, Township 11 North, Range 3 West; that he has read the affidavit of one R. L. Clifton, filed in this cause on behalf of the complainant and is well acquainted with the circumstances therein alleged of water appearing in said off-set wells. In this connection, the affiant states the fact to be that the two wells referred to belong to the Wirt Franklin Petroleum Corporation, and that one of them is a direct off-set to the said No. 1 McCallep of the Champlin Refining Company, and the other is two short locations West of the said Champlin Refining Company's McCallep No. 1 well and that this affiant is familiar with their history. That the said well which is a direct off-set is known as the Minnie Page No. 2 well and that said well did for a time produce some water, but that the reason therefor was as follows: That the well was drilled too deep into the sand and was at or below the edgewater level of the producing structure in this particular vicinity; when the water was encountered it was promptly plugged off after testing and the well has not since produced any water. Affiant further states that production of the water by said well was not in any manner caused by the proration plan in effect in said field; affiant further states that the other well referred to in the said Clifton affidavit is known as the Wright No. 1 well, and affiant states the fact to be that said well is not producing any water. Affiant further states that after said last-mentioned well had been shut down for sixty-five days there was a slight showing of water on the first day that it was thereafter opened up, but that said showing immediately disappeared, and that in the opinion of this affiant said water was not edgewater or it would have continued and increased in volume rather than ceased altogether as was the fact; that in fact the particular sand which produces water in that part of the field was not encountered in said well.

Affiant further states that he is familiar with the facts pertaining to the well known as No. 1 Naden, referred to in said Clifton affidavit, wherein it is stated that said well had an initial production of approximately five thousand barrels of oil and eighty million cubic feet of gas daily, and wherein it is further states that on opening said well a second time and after off-sets had been opened said No. 1

Naden produced less than thirty-five hundred barrels daily, and wherein it is stated that apparently repressuring effect of tremendous gas volume on the producing sands in this well had caused underground waste of the oil and gas reserves. Affiant states the fact to be that through a mistaken policy the said well No. 1 Naden of the Champlin Refining Company was cased upon the top of the upper gas producing sand and not at the top of the oil producing sand which is lower than the gas producing formation; that wells cased [fol. 231] in this manner on this particular gas sand create a back pressure of the oil sand and thus the gas by-passes into the oil producing sand, thereby bringing up a pressure on the oil sand which reduces the oil production of the well. Affiant further states that if the said Naden No. 1 well had been properly cased lower and at the top of the oil producing zone the volume of gas released would have been less and would not have created the back pressure upon the oil producing sand in this well and the oil production from the well would not under those circumstances have decreased so rapidly as it did.

[fol. 232] The Affidavit of M. J. Kirwan, introduced on behalf of the defendants-appellees, states:

That he has been engaged in the business of developing oil and gas mining leases, and of operating oil and gas wells and producing petroleum for the past 22 years, and is now engaged in that business; that during said 22 years he was employed as follows: Over five years as Petroleum Engineer in the California fields; approximately six years as a Conservation Agent in the State of California; one year as Petroleum Engineer in the oil fields of Japan; approximately four years as Petroleum Engineer and Superintendent of the U. S. Bureau of Mines, Petroleum Experiment Station, at Bartlesville, Oklahoma, and for approximately six years as Chief Engineer and Manager of the Production and Engineering Department of the Indian Territory Illuminating Oil Company; that he is now Manager of the Production and Engineering Departments of the Indian Territory Illuminating Oil Company. Affiant further states that said company drilled in the discovery well in what is known as the Oklahoma City Pool, having completed the same on or about December 4, 1928, as a pro-

ducer of oil in large quantities; that said company owns leases covering approximately 9,000 acres of land in and adjacent to said field, and has drilled thereon 236 wells that are productive of oil in paying quantities, and is engaged in the further development of its acreage in said field; that the potential production of the wells of said company is approximately 1,250,000 barrels per day (not including the share of said potential which belongs in some cases to joint owners of some of the leases owned by said company in said field); that said company has a market outlet in said field for only approximately 30,000 barrels per day because of the fact that the total market outlet of said field is greatly below the potential production of the wells in said field, and it is operating its properties in obedience to the orders of the Oklahoma Corporation Commission.

Affiant states that the wells of the Champlin Refining Company which are in said field are, so affiant understands, producing from sand formations, and he states that the periodic shutting in of wells producing from certain sand formations permits a readjustment of pressure in the sand and tends to retard the encroachment of water, and that for this reason the operation of said wells on the time basis referred to in the orders of the Corporation Commission does not injure them, but rather benefits them, and will result in a greater ultimate recovery of oil thru said wells. Affiant states that he has made a careful and intensive study of the various methods of operating oil and gas wells, and of the conditions which obtained in the formations from which the oil is produced in the Oklahoma City field, and operation of producing wells therein, and he states that it is his opinion that in the case of wells in the sand formations in said field water encroachment would be retarded by shutting in the wells during certain intervals to permit readjustments of pressure in or near the wells as compared with pressures in the producing formations down slope on the structure; that the continuous open flow production of wells near the edge of the productive part of the structure results in a decrease in the pressure of the formation immediately surrounding the well, thereby increasing the hazard of water encroachment from the down slope part of the formation, in addition to increasing the encroachment of water that has been found to exist in the base of the sand in certain producing wells.

[fol. 233] Affiant further states that Indian Territory Illuminating Oil Company does not own any transportation or marketing facilities, or other market outlet for any of its production in either the Oklahoma City field or the Greater Seminole area, except that it has a pipe line in the Oklahoma City field to its loading rack on the Missouri-Kansas-Texas Railway whereby said company is enjoying a market outlet of about 2,000 barrels per day of its Oklahoma City field crude oil production which it ships in tank cars to various purchasers thereof, in addition to a pipe line to the St. Louis-San Francisco Railway in the Oklahoma City field, but said line has not been operated recently. He further states that said company induced the Empire Pipe Line Company to lay a pipe line into the Oklahoma City field and to purchase production of crude oil therein, and that said pipe line company is purchasing about 20,000 barrels of crude oil per day therefrom, but is taking from said Indian Territory Illuminating Oil Company only about 15,000 barrels per day; and that said company was instrumental in inducing the Oklahoma Pipe Line Company to lay a pipe line into said field and to purchase production of crude oil therein, and that said last named pipe line company is purchasing about 13,000 barrels per day from said field, but that it is taking from said Indian Territory Illuminating Oil Company an average of about 3,500 barrels per day. Affiant states that it has been contemplated that the various purchasers of crude oil in said field would so allocate and distribute their takes among the several producers therein as that all producers would be able to market their respective prorated parts of the marketable production from said field, but states that if there were no such proration as is ordered and enforced by the Corporation Commission of Oklahoma, said Indian Territory Illuminating Oil Company would doubtless be in position to enjoy as outlets for its oil all of the purchases which would be made by said Empire Pipe Line Company, but even in such event said company would still be unable, were the market outlet for crude oil in said field to remain the same as it is now, to produce and market but a comparatively small percentage of its production over the amount which it is now able to market.

Affiant further states that said Indian Territory Illuminating Oil Company, as well as most of the producers of

oil in the Oklahoma City field, have not produced the full allowable percentage of the production from their wells as fixed by the said orders of the Corporation Commission for the reason that the market outlet from said field has not admitted thereof; and that the wells in said field which are operated by said Indian Territory Illuminating Oil Company, including not only those which it alone owns, but also those operated by it but in which others have joint interests, were underproduced as of September 25, 1930, to the extent of approximately 460,000 barrels, and has in its lease tankage a total of approximately 512,000 barrels ready and waiting a market outlet, making a total of underproduction plus unmarketed production of approximately 970,000 barrels which, by the terms of said orders, said company has been entitled to produce from wells in said field operated by it.

[fol. 234] The affidavit of J. M. Hewgley, introduced on behalf of the defendant-appellee, states:

J. M. Hewgley being first duly sworn upon oath states that he is the District Superintendent for the State of Oklahoma in charge of the development and production of the oil and gas leases belonging to the T. B. Slick Estate, and has held said position since the opening of the Oklahoma City field; that he has had approximately fifteen years' experience in the operation of oil and gas leases and the production of oil therefrom; and he states that said estate is the owner of fifty-eight producing oil wells in the Oklahoma City field; that the potential production of said wells is approximately 360,000 barrels per day, but that the said estate is unable to market more than ten thousand barrels per day of the production from said wells, and has been unable so to do for some time last past because of the extremely limited market outlet for crude oil in said field as compared to the total potential production of said field; that said estate does not own any transportation or market facilities of its own and has no market outlet for its production other than for that part of its oil which it is able to sell to other concerns who purchase oil in said field.

Affiant further states that said estate is operating its said wells as it has been during all the time that it has had production in said field under the proration order of the Corporation Commission of Oklahoma, and he further

states that the wells in said field are operated on what is called a time basis. He states that T. B. Slick departed this life on August 16, 1930, and that he was one of the most successful so-called independent oil producers in the Mid-Continent Oil & Gas Fields, and that after the opening of the Oklahoma City field and until his death he believed and advocated that the plan of proration which obtains in the Oklahoma City field, including the operations of the wells on the said time basis, was the most practicable and successful means for the conservation of the oil and gas in said field that had been suggested and was a hearty supporter of the orders of the Corporation Commission applicable thereto, and in this connection further states that the operation of the wells in said field upon the time basis instead of upon the percentage basis originated with Mr. Slick and that it was advocated to and adopted by the Corporation Commission.

Affiant is well acquainted with the operation of the oil wells in said field, and he states that in his opinion, based on his observations and experience, that said time basis plan of proration has proven successful in said field, and that, to the extent that the wells in said field are operated alike on said basis under the orders of the Corporation Commission, each producer is placed upon a basis of equality and fairness in respect of the recovery of oil from the producing formations in said field.

Affiant further states that most of the producers in said field are under-produced in respect of their allowable production under the said orders of the Commission due to the fact that the market outlet for oil in said field has not been as high as the last fixed percentage designated by the Corporation Commission, and in this connection states that the Slick estate was under-produced on the 26th day of September, 1930, five hundred thirty-six hours and had on hand in storage in the stock tanks on its leases approximately 225,000 barrels of oil ready to be run into the pipe lines.

[fol. 235] The affidavit of J. R. McWilliams, introduced on behalf of the defendant-appellees states:

That he is a graduate of the Engineering School of the University of Michigan; that for approximately twelve years last past he has been connected with the oil and gas

development and producing business in the Mid-Continental oil and gas fields, and that during the last six years he has been employed by Skelly Oil Company and has devoted a great deal of his time and attention and has given very careful study to the subject of the recovery of oil and gas from their natural underground reservoirs and the efficient utilization of the energy contained in said reservoirs in the recovery of said substances; that affiant has, during the last few years, written for publication several articles on the above mentioned and related subjects; that said Skelly Oil Company has production in a number of the oil fields in the State of Oklahoma, as well as in surrounding states, including the Oklahoma City field and Greater Seminole area, and affiant has made a careful study of conditions in said fields and said area.

Affiant further states that underground waste of crude oil consists in leaving in the underground reservoir oil which could and, hence, should have been extracted and recovered therefrom, and thereby made available for commercial utilization; then when such waste occurs it is due primarily to the dissipation of the gas energy naturally existing and contained in the reservoir when the pool is first discovered, by improper subsequent operations of the wells in the field.

In a reservoir the gas exists in a co-mingled state with the oil and there is also above the oil gas not so co-mingled, called free gas. In their sealed up condition in the reservoir, these substances are under pressure, sometimes quite high, as, for example, in the portion of the Oklahoma City field where the wells of Champlin Refining Company are located, as high as upwards of 2,000 pounds to the square inch. This pressure greatly compresses the gas, both that which is in solution with the oil and the free gas; hence, we have what is called "gas energy." In most reservoirs, when wells are drilled into them, the oil moves to the wells because of the inherent energy in the gas when under pressure, the amount of oil produced through the wells depending upon the degree of efficiency with which this gas energy is used. It is evident, therefore, that the gas energy must be controlled if there is to be an elimination of underground waste.

The oil and gas in a reservoir are in a quiscent state until the first well is brought into production. The equilib-

rium of forces which previously existed is then disturbed and the pressure in the immediate vicinity of the well is reduced. A differential pressure between the well and the surrounding area is thus established, causing the movement of the oil and gas to the point of lower pressure, that is, towards the well.

The oil and gas contained in the reservoir sand pores which are in the immediate vicinity of the well are the first to move to and come out through the well, and as the lowered pressure advances through the pores in directions away from the well, it establishes drainage channels radiating in all directions from the well the pore spaces being in communication vertically, horizontally, and in all directions. As there is a greater percentage of gas in the upper part of the [fol. 236] sand than in the lower, and as the gas moves with greater freedom than oil, it is obvious that the upper drainage channels become farther extended laterally than the lower ones which contain a greater percentage of the more viscous and slowly moving oil. This situation creates an upper area of lesser resistance through which the gas, being more mobile than the oil, leaves the oil in its lower horizontal channels and escapes in a vertical direction into the upper horizontal channels and thereby has access to the well without propelling its quota of oil. This gas expands vertically into the upper channels because it is blocked in the lower oil-bearing channels due to the proportionately increasing resistance of the oil as the distance the liquid must be moved to the well is lengthened.

Thus, the greater a well's drainage area, the more gas energy escapes to upper channels and leaves its quota of oil undelivered in the lower channels. So, it is evident, that the percentage of oil recovery decreases as the area of a well's drainage increases. And if one well be permitted to encroach upon another's drainage area by being permitted to operate upon a more generous basis than its neighboring wells, it will result in underground waste because the gas energy will, in such event, expand from a greater distance and cannot be so efficiently utilized in propelling the oil to the more distant well. Therefore it is evident that if one well be permitted to produce on a more generous basis than its neighbors, it will encroach upon its neighbors' drainage area, thereby dissipating a portion of the gas energy in those areas and effecting an

underground waste which could be avoided were all the wells forced to produce on the same basis. It should be understood that if one well were allowed to produce on a more generous basis than others in the general vicinity thereof, its individual ultimate production would be greater than otherwise, but the neighboring wells, due to the dissipation of gas energy expanding over a greater distance, would lose a much greater amount of oil than the one well would gain. The resultant effect on the area as a whole would be a smaller ultimate recovery therefrom than if each well be restricted to the drainage of only its own area; and the difference in the ultimate recoveries left unextracted in the ground constitutes underground waste of the oil.

Furthermore, water which is present in most all oil-containing reservoirs is, because of its density, positioned as a rule in the lower portions of such reservoirs, underneath the oil or on the lower outer edges of the formation and is originally under approximately the same pressure as the gas and oil. Water, like gas, will travel through a sand more readily than oil, especially if the viscosity of the oil is changed by a diminution of the amount of gas in solution with it. It is quite important, therefore, during the flush stages of production, that is, when the pressure on the gas, oil and water is near the maximum in the particular reservoir to drain the slower moving, viscous oil from the reservoir at such a rate that it can have time to follow the winding pore channels to the wells and not be at a disadvantage with the more mobile water and excessively mobile gas. If this is done the pressure on the gas and oil will remain relatively the same as that on the surrounding water and the water under pressure will then also act as a propelling agent to force the oil to the wells. On the other hand if the attempt to withdraw the oil from the reservoir is too rapid over an extended period of time then the ratio of the gas to the oil produced will increase thereby decreasing the efficiency of the gas energy as a propelling agent at the same time making the oil remaining in the [fol. 237] sand more viscous and less mobile because less gas is in solution. There will also tend to be an adjustment in the relative positions of the oil and water in their progress toward the wells in that the water being the more mobile of the two will make faster progress and if these

relative rates of travel are allowed to continue the result can only be that the water gradually encroaches toward the wells, reducing the number of drainage channels through which the oil should travel. Ultimately the water reaches the wells gradually and effectively shutting off the drainage of the oil to them, trapping it in pockets from which it is practically unrecoverable and thereby constitution underground waste. Proration of flush fields therefore tends to eliminate underground waste of oil because the rate of extraction of the oil is retarded thereby retarding the rate of water encroachment.

[fol. 238] The affidavit of H. M. Stalcup, introduced on behalf of the defendant-appellees, states:

That he is Vice-President and in charge of the Production of the Skelly Oil Company; that said Company owns and operates producing oil and gas leases in the Greater Seminole Are- and the Oklahoma City Pool in the State of Oklahoma; that in the Greater Seminole Area said Company owns ten (10) producing oil and gas leases on which it is operating thirty-one (31) producing oil wells, and that in the Oklahoma City field it owns and operates six (6) producing leases on which it has drilled and is operating seventeen (17) producing oil wells; that there are approximately 2,800 producing oil wells in the Greater Seminole Area, and that under the existing proration orders of the Corporation Commission said wells in said Area are and have been for more than one year last past operated on what is called the "percentage basis"; that there are approximately 557 producing oil wells in the Oklahoma City Field, which have been and are being operated under proration orders of the Corporation Commission on what is called a "time basis," that is, the wells are divided into Classes and one class is permitted to produce for a certain length of time and is then required to shut down while another class produces for an equal length of time, and so on.

Affiant further states that he has been actively engaged in the business of drilling and operating producing oil wells for approximately fifteen years, and that in his opinion, based upon his knowledge, acquired from close contact with and stury of the various methods of operating producing wells, the operation of the wells referred to in the Greater

Seminole Are- upon the percentage basis and of those referred to in the Oklahoma City Field on the time basis, have not and will not be damaged by reason of either of said methods of operating the same, so long as all of the wells in the said pools, respectively, are operated and produced on the same basis of curtailment.

Affiant further states that should any of the wells in either of said fields be operated and produced substantially in excess of the percentage allowed by the orders of the Corporation Commission while the remainder of the wells were limited to the production of the percentage fixed by the said Commission for said fields respectively; then said remaining wells, and particularly those nearby and in the general vicinity of the former, would, in affiant's opinion, based on his experience and knowledge, result in serious damage by reason of drainage of oil from the lands surrounding and in the vicinity of the former, and would result in a serious reduction of the untimate recovery of oil through the wells that remained under operation in accordance with the said proration orders, due to the dissipation of the pressure in the oil containing formation.

Affiant further states that said Skelly Oil Company is now engaged in drilling three wells in the Oklahoma City Field. He states that the present potential capacity of the seventeen (17) producing wells of said Company in said Oklahoma City Field is approximately 180,000 barrels per day, including one well brought in September 25, 1930, with a potential capacity of approximately 90,000 barrels per day; and that said Company has no marketing or transportation facilities of its own in said field, and that said Company is not at this time and has not been, for some time last past, able to market exceeding 3,000 barrels per day.

[fol. 239] Affiant further states that said Company has no transportation or marketing facilities of its own in the Greater Seminole Area, and that its wells in said Area have been operated in accordance with the percentage of allowable producing fixed by the orders of the Corporation Commission, and that there is not a greater market outlet at this time in either of said fields or Areas for a greater percentage of production than has been fixed by the said Commission for said fields respectively.

[fol. 240] The affidavit of Otto Bradford, introduced on behalf of the defendant-appellees, states:

Otto Bradford, of lawful age, being duly sworn upon his oath states that he is the person designated by the Corporation Commission of the State of Oklahoma as an agent of said Commission to aid in the enforcement of the Proration Orders of said Commission and as such keeps and has kept under his supervision record of the production of oil in the Oklahoma City pool said records being compiled from data furnished by the various producers of oil in said pool and from data assembled by himself and under his supervision; that under the present orders of said Commission producers are permitted to open each well eight hours for initial test after each said well is first brought into production, which eight hours is charged as producing time and is required to be equalized and after initial test, four hours in each twelve days. That if any well be opened for more than the allowed time under said orders the same is charged in said records as overproduced; that according to his said records The Champlin Refining Corporation has two producing wells in the Oklahoma City Field and that up to and including December 22nd, 1930, the allowable time, actual time opened for the production of oil (not including time when gas only was produced) and time and barrels of oil overproduced is as follows:

Naden No. 1

Allowable time for Production under Corporation Commission Orders: 2 days, 11 hours, 30 minutes.
Time opened for oil production: 3 days, 14 hours.
Time overproduced: 1 day, 4 hours, 30 minutes.
Barrels of oil overproduced: 5,045.

McCalep No. 1

Allowable time for Production under Corporation Commission orders: 2 days, 3 hours, 40 minutes.
Time opened for Production: 4 days, 5 hours, 30 minutes.
Time overproduced: 2 days, 1 hour, 50 minutes.
Barrels of oil overproduced: 14,352.

Affiant further states that he is experienced in the oil and gas mining business, that he is familiar with the location of each of said wells and with the records of producing formations in the Oklahoma City Field, that the same have offset wells upon the property of other producers in very close proximity to the said Champlin Refining Corporation wells and that the formations in which said wells are drilled and the location of said wells are such as to permit drainage to the property of the Champlin Refining Corporation from the property of other producers surrounding the same if said wells are allowed to produce a greater length of time than the offset wells.

[fol. 241] OFFERS IN EVIDENCE

The plaintiff-appellant introduced certified transcripts of the testimony of witnesses and other evidence received by the Corporation Commission during the hearings conducted by the Commission on the application for the said orders of October 28, and December 30, 1930. At the hearing of this cause, plaintiff's solicitors contended that the respect in which the Commission had no evidence before it to sustain its orders was on the subject of actual waste. The testimony before the Commission in respect to actual waste was abstracted in the trial court by the respective counsel and is as follows:

[fol. 242] Plaintiff-appellant's abstract of testimony taken before the Corporation Commission as to waste is as follows:

Beginning on page 79 and concluding on page 81, RAY M. COLLINS testified on direct examination that he had production in the Cushing pool and other new pools where there was an overproduction and at that time they let it go down the creek saying "we could not take care of it, and our neighbors were running theirs through the pipe line"; that if there were no steel or wooden storage, or appreciable amount thereof to store oil permitted to be produced, it is a necessary result that oil must either go into earthen storage or be entirely wasted; that in earthen storage there may

occur a loss of anywhere from 50 to 90% due to evaporation, absorption or washing.

On cross examination, beginning at page 100, the same witness testified that there is no waste going on in Oklahoma now whether the field is prorated or not; and that everything is running satisfactorily in Oklahoma now; that he wants to prevent actual waste which he says on page 101 is opening up a well and letting it go down into the ground; on page 103, that he wants proration to prevent actual waste for one thing and on page 104, that he would want a rule to prevent waste besides (a rule or order by the Corporation Commission stopping the tremendous drilling campaign in the Oklahoma City field. On page 110 he testifies he wants proration to prevent physical waste and to prevent one neighbor taking more oil out of it than his proportion. On page 111 Collins testifies in answer to the proposition and question: "If you take oil out from under me, I am going to run my well wide open. That is not physical waste, is it?" "That if I let it go down the creek it will be." He further says that he cannot name a producer in this field that opens his well and lets the oil run down the creek at the present time or in the last 5 years.

On page 112 he testified that if you lift proration there will be actual waste, for the reason that a man who has no pipe line facilities or cannot sell his oil will let it go down the creek; that he doesn't know of any oil being stored in earthen storage and that he hasn't known of any since about the Cushing field days which he says was about 15 or 16 years ago (page 114).

On page 115 in answer to the proposition presented where a man owns his own well, pipe line, refinery and marketing facilities for the finished product and the question as to what harm there would be in letting him run to full capacity that "as a matter of waste, if I had an offset well and you opened your well and I was not able to take care of mine, I certainly would build earthen storage and try to take care of it in that way." On page 116 he testifies that his only reason is that it would be taking more oil from his neighbor than what he considers to be a due proportion.

At page 178 Collins testifies that they intended to include the Osage reservation in the proration orders, and at page

180 that he doesn't believe there is imminent danger of waste being committed there; and further that prior to the time he made this application he did not ascertain whether there was any waste in those fields other than the ones heretofore prorated. He testifies also at page 180 that in his [fol. 243] judgment there are many areas, many wells, many leases which will have to be given special attention by the Commission to prevent actual waste by reason of this order; that is wells making water and wells that have no gas pressure to speak of and others that are poorly equipped, if this order is forced on them and given strict enforcement, that will be positively injured rather than benefitted.

At page 181 he says that if the little wells producing from 5 to 25 barrels per day which the contemplated order places under proration were permitted to run 100% waste would be imminent in those fields; that the waste would occur by the fact that this purchasing power has been transferred to Oklahoma City, and they would not be able to take care of it. At page 183 he states (referring to fields of small production that there has been no waste in the past.

At page 201 COllins says that his statement that there is no waste and has been no substantial waste in the State of Oklahoma is due to the fact of these very proration orders that have been issued in the past.

At page 215 Collins in answer to a hypothetical question "supposing the I. T. I. O. Co. had a demand for 100,000 barrels of oil per day at 50 cents per barrel which they wanted to sell and the other producers wouldn't take that for their oil, if it would be waste for the Commission to let them sell it" testifies that it would be waste (page 216-217). At page 218 he says his reason is that the other fellows would have to run the oil into earthen storage. He states further that if they could show there was actual demand and no waste he would certainly recommend it.

At page 223 Mr. Collins testified that "we" did not take into consideration the financial ability of a correlative owner to drill a well; that as long as he (a correlative owner) took ratably as the common pool was prorated, there would be no waste. He says that he wouldn't try to protect any correlative owner of the common supply because he hasn't got a well on his lease (p. 224).

At page 252 MR. VICTOR H. SMITH testified that his company has one well in the Oklahoma City pool and that they can handle a percentage of the production from that well without any waste occurring in connection with it, but not all the potential which was rated as 150,000 barrels per day based on some two hours' gauge; that they could handle possibly 30 or 40,000 barrels per day through their plant and other facilities without waste, except perhaps waste of gas; that if they should find it would produce more than they could handle it would be operated so as to commit no waste of oil (p. 253).

At pages 270 and 271 Mr. Smith testified that if the Oklahoma City field was opened up and no limit placed on production all the little refineries in the state would open up and "the first thing you know we would have 3 cent gasoline," but there wouldn't be any waste in connection with 3 cent gasoline because "we would get a lot more airplanes."

At page 273 Mr. Smith testified that if oil were to go down in price to 50 cents the big companies would build tanks to put it in and that there would be a waste in connection with the storage of oil in steel or earthen tanks. At page 275 Smith says he doesn't believe there would be any waste of oil if the Commission should set aside its orders and turn everybody loose in the Oklahoma City pool, un- [fol. 244] less the producers would be foolish enough to try to put light oil in earthen storage. In answer to the question: "Isn't it a fact that in every flush field that we have had in Oklahoma where we didn't have proration they have put it in earthen storage?" he says: "I wouldn't say so on light oil." Upon being asked if they didn't do it in Cushing he replied "Yes, if you go 'way back in the old days. They didn't have anything else to do with it." He says they did that at Smackover but not on light oil. He states there is waste on heavy oil in earthen storage but not as much as the light (P. 726). The small producer would take the crude as far as his facilities would permit and without waste. If the larger producer cannot ship all of his oil out he will keep his wells shut in until he can increase his facilities so as to handle more (p. 277).

MR. DYE testifiying at page 300 says that to shut in wells entails waste of oil because "if you shut in a well you never

get the maximum production back in some cases." The witness further testifies at page 304 that he has been engaged in the oil business since 1916 and that they have never had any waste; that he doesn't know of any waste in the production or handling of crude oil anywhere and that the question of waste is not bothering anybody at this time as far as he knows.

At page 308 the following question was asked: "In your judgment, if proration orders were lifted by the Commission in that field (Oklahoma City) and that field was opened up, would there be any waste of crude oil or would there be any taking out of proportion by one operator of a well as against another?"

The witness, Dye, replied: "There would be a discrepancy in the taking of oil; but I doubt whether anybody would allow the oil to flow down the creek. They would probably keep their wells shut in if they couldn't sell it." At page 309 he says it is problematical as to whether there would be any waste of crude if the lid were taken off and that field were opened wide up; it would depend, necessarily, upon how the operators in the field would work.

At page 328 Mr. Dye testifies, relative to waste, that if all the producing companies that have manufacturing and marketing facilities would take the position that they were going only to produce and manufacture their own products it would cause a lot of waste and abandonment of old wells if they contiued to drill the way they have been.

Mr. E. B. Reeser testifying at page 333 states that if production were in excess of reasonable market demand the condition of waste would follow. At page 334 he says by physical waste he means that "whenever you produce oil in excess of the demand it either goes into earthen storage or tanks; or down the streams or water courses, and in either event loss results." He says he doesn't know of anybody in Oklahoma today that is running oil into streams, nor of anybody that is putting it in earthen storage, or of anybody that has in Oklahoma within the last 10 years. To the question: "Then there is no running down the streams nor putting in earthen storage, so your idea, so far as Oklahoma is concerned, Oklahoma is not now suffering an eco-

nomic waste?" he replied: "No; I am talking about what would result if more than the market demand were produced." He states again at page 335 that there is none run down the streams but that physical waste would result if a volume greater than the market demand was produced; that would result if put in steel storage by evaporation. At page 338 he states he doesn't want an over-supply because it would produce waste by placing it in steel tanks; and in that event you would have an added waste of the cost of [fol. 245] producing your tankage, and then the evaporating losses." He says: they should be required to stop storing oil in steel tanks because that would stop waste by steel tankage.

Mr. Reeser testifying at page 391 says that if there were not restrictions of production there would be actual waste; that waste has been prevented by the orders of this Commission from time to time; that prior to the time we had the law under which we are now operating there were conditions of actual waste in times of overproduction; that there was earthen storage in Oklahoma; that there was waste and that there was oil going down the creeks.

Mr. C. C. Herndon testifying at page 403 says that in his judgment if there were not a proration order in effect, or if one were not continued in effect, there would be actual waste of crude oil in the state of Oklahoma; that he considers such waste imminent if no such order were made; that the potential production of crude oil in the state of Oklahoma is in excess of the reasonable market demand for it. At page 429 the same witness states: "where the potential production of big flush wells in the aggregate largely exceeds the reasonable market demand, then to permit one man, because he happens to be equipped with these things, to operate his wells to capacity or above the level that can be maintained by others, either induces waste on the part of the others or causes the loss of other oil to the other man, which in turn leads back to waste, because under those circumstances men protect themselves in the best way they can."

Mr. Herndon testifying at page 437 says he knows of no wells in the Stephens County field where the oil is being wasted, and at page 439 he says that up to this time there

is nothing wrong with the way the oil has been handled in Stephens County, but there will be something wrong if they are not brought under this proration order because there will be a transferrence of purchasing power to Oklahoma City.

At page 441 he testifies that in figuring on cutting down the production in Stephens County as keeping it cut down and preventing further development by test wells that is now in effect under the proration order they have not considered the welfare of the producer of oil but rather the alleviation of waste in this state during this time of over production. He says at page 442 that he is not assuming that the producer in Stephens County has committed any waste but he thinks he will within the meaning of the statute. He doesn't know where in the Stephens County any man has committed waste in any sense but that it is imminent; that waste will occur. That it will be done by production of oil in excess of the market demand for it. If the Stephens County people increase their production 500 barrels per day that will constitute waste, if there is no market demand for it. If there is a market demand for it, it will not.

At page 455-456 Mr. Herndon answers the question: "You would not waste any of your oil, would you?" with the reply "I dare say we would."

Mr. A. V. Hoenig testifying at page 466 says he doesn't believe the full production of the Oklahoma City field could be produced without waste and that in his judgment the continuance of some sort of a proper proration order is necessary to prevent waste in the field; and at page 467 that to produce this field without restriction or proration would result in a very material waste of oil and gas.

[fol. 246] Mr. Otto Bradford testifying at page 531 says that in his judgment the Oklahoma City field could not be produced at its maximum production without physical waste for there is no way for a good part of the oil, at present, to be handled; that if the wells were all producing he thinks it would necessarily result in earthen storage or actual escape down the streams; at page 532 he says that he knows of no demand here for purchasing oil to be put in storage.

At page 533 he states that it is his opinion if they were to open up all the wells in the Oklahoma City field they would put it in earthen storage; but that they could keep their wells shut in if they would. At page 534 he says he knows of no big oil company who now stores oil in earthen storage because there is no need of it, nor of any producer of oil that runs it down the creek—that that is a past matter of many years ago.

At page 536 Mr. Bradford was questioned as follows: "Assuming that testimony to be true, and assuming that there is a refinery in this city with an outlet running into this field and has its own production in this field and it takes that production and runs it to its own pipe line, refines it in his own refinery and markets it through its own marketing facilities, in the usual and ordinary way that refining business is carried on, wherein would there be any waste in such a transaction?- He answers: "There probably would not be any waste in the operation of that particular one well if the offset wells would remain shut in." He states this man's activities would not be waste but that it would probably result in waste. It would result in waste because if he had the offset well he would run it same way—to the pipe line, tank cars or turn it loose. He says if he could not sell it he would let it run down the creek.

At pages 540-541, the same witness testifies that to open the field up would necessitate the use of earthen storage; there is not enough available storage to take care of it though they could probably have built tanks along from time to time so as to have had plenty of facilities for taking care of it.

At page 547 the witness testified that some wells have gone dead but that he is not a production man and does not know the cause. These wells were all in the lime production. Water swallows them quickly.

Beginning at page 555 and continuing through page 557, Mr. Otto Bradford testified that he was acquainted with the Healdton field in the days of its glory in which a situation was created (which approximately gave rise to the present law), where the thousands of barrels of oil were put in earthen storage, plus that which ran down the creeks from which there was enormous wastage involved by evaporation, seepage and running down the creek; that the numerous

skimming plants erected on the creeks did not in any way recover all the oil that went down the creeks; that he did not know the per cent of earthen storage but that he knew of several earthen storage tanks that were built; that these storage tanks retained some of the oil but that some was lost by seepage, and quite a little was lost by excessive rains which would soften the dams and they would go out. This was not due alone to the fact that the production was more than the market demand but that the only pipe line in the field, Magnolia, could not possibly take care of all the production. They ran their own and a little besides so the other fellows produced anyway they could to hold it. At [fol. 247] page 559 he says all this took place about 1914 and at page 560 he says this field produced low gravity oil and that the higher the gravity the more the evaporation.

At pages 568-571 Mr. J. R. TRAVIS of Duncan, refiner, pipe line owner with refinery connected with 195 wells and with many years in the business, qualified as an expert. He states he was in the Cushing field; that there was no oil went into earthen storage during the Cushing book, there was some that went down the creek which occurred when they were bringing in the wells and did not shut them in properly or occurred when they were swabbing the wells after the gas pressure went off and the big waste occurred in 1913 and early part of 1914, and in 1915 or January 1916 the waste had ceased. He purchased oil in the Burnett field, Cotton County field, Stephens County field, Oklahoma City field and has been out there many times, and said "I have never known of any deliberate waste where they wasted it purposely never in the history of my experience in the oil business." In the Cushing field oil was wasted on account of the equipment not being right to hold it. They put it in wooden tanks and they leaked and were not well fixed to take care of the oil. They drilled a lot of those wells there without even having a mastergate, but under the improved modern methods producers are equipped with steel tanks. There are no wooden tanks any more, all tanks are steel and no earthen tanks for storage that he knew of. He says we hear nothing of that kind any more. The various ways that crude oil in the process of production can be wasted, or if when bringing in the well they are not

properly equipped in case of swabbing and when they are shooting wells all those conditions will exist whether there is a proration order or not, and the proration orders pretend to have nothing to do with the bringing in of the wells or the control of the drilling. "With our modern methods of handling I think there would be no waste to amount to anything unless it might be in the shooting of the well," but the proration order has nothing to do with that and the witness knows of no other kind of waste that occurred in connection with the production of crude oil. He has been in the business about 30 years.

At pages 584-585, Mr. Travis states that there would be no waste if he were permitted to take his oil out, run it through his pipe line and into his refinery; that the only waste he could see would be a reduction in price, that he doesn't know of waste now such as it has been defined by the various witnesses. Again at page 587 he testifies that he has his own pipe line and marketing facilities and that absolutely no waste occurs in connection with the handling of it.

The same witness testifies at page 589 that you can't shut a well in without hurting it. He says, "You have no business drilling that sand. If you leave the drill out of the sand you won't hurt the sand, but once you drill it you had better produce it." At page 590 he adds "Because it goes somewhere. I don't know where it goes. The water comes in on it, and if the water wouldn't come in on it the gas goes somewhere; the gas gets away from you." He states the only remedy for over-production is the cessation of drilling.

Mr. Travis testifying at page 604 says the situation will take care of itself if let alone and there will be no waste. The Corporation Commission or the farmer will not let you run it down the creek. He has never known of any going down the creek maliciously or any other way in the last 15 years. Sometimes they will let a well get away [fol. 248] from them. P 605. He says, there has been no oil wasted and there would be no oil wasted unless it happened like a wild well out here of the I. T. I. O. that got away from them. There has been more oil wasted, I expect, in this field than any other field in the state in the last 10 years which he says is even under proration and none of it

done on purpose for that would happen whether there were proration orders or not.

The same witness testifying at page 629 states he is tied onto 195 wells in the Stephens County district; "there is not a well that I am tied onto, with the exception of one, that it wouldn't ruin it to be shut down." At page 630 he says, "I have always been told and thought that we must not shut them in. I have had a producer come to me at 2 o'clock in the morning and get me out of bed so I could run his oil; if I didn't he was going to have to close the well in and ruin it. I have heard nothing contrary until the last year or two."

In reply to the question as to what would be the effect on a well of shutting it in for a certain number of days under the proration order the witness says that "all the wells that I have ever had any experience with the water either came in or the sand paraffined up. If the water comes in it is hard to ever get it off the sand. If it paraffines up you might shoot it and get it off the sand." As to the effect on the ultimate recovery of a pool like that at Oklahoma City of shutting in the wells that it would hurt them if allowed to flow wide open but to pinch them in and let them flow some all the while would help the wells.

At pages 659-660, Mr. Travis on cross-examination testifies that there are some oils you can't waste by putting it in earthen storage but most Oklahoma oil would be wasted if put in earthen storage. If put in tight steel storage he knows of no waste that would occur. There is some initial loss by evaporation. He stored some in Stephens County 10 years ago and there is probably a 2% waste there. He says at page 663 that it would be a crime to put Oklahoma crude in earthen storage outside of a little heavy asphalt base crude but that he doesn't know of any earthen storage in recent years. He states there would be a small loss if put in steel storage and left for any appreciable time. He doesn't know anything about the Smackover field or of earthen storage used there.

The same witness at pages 671-673 says he is not favorable to any kind of storage except in cases of emergency like we have now; that oil is a lot better out of the ground in storage than it is in the ground mixed up with salt water, if you tap a field you ought to go ahead and oper-

ate—that it is better to take it out after it has been tapped; that the loss would not be near as much by storing it than it would if you leave it in the ground after the field has been tapped like this one. At page 672 he says that if your storage is tight, the ordinary Oklahoma crude will probably lose from 1 to 3% over a year and then it won't lose any more; that there is some loss in handling high gravity crude or gasoline any way you handle it whether you have proration or not and tanks are strapped 3% short to cover that whether they run it immediately to the refinery or not. He states at page 374 that he knows there is 100,000 barrels of $3 or $2.70 oil stored in the Duncan field and that it has been there over 9 years.

Mr. A. V. Boswell after stating that he has been connected with the oil business 30 years as a hydraulic, petro- [fol. 249] leum and mining engineer says he has had experience at Bartlesville, Kiefer, Glenpool, Ardmore and Oklahoma City. He says at page 711 that his experience has been in the drilling in of any wells that he has operated in, as long as you keep those wells flowing and allow them to flow freely, you are going to get a full production, but when you close a well in, either completely or partially, you are going to ruin, to some extent, the production of oil from that well. He says we have tried it several times, at least in 5 fields in Oklahoma and that has been his uniform experience without any exception.

He says at page 712 that it has always been the individual engineer's judgment upon which they all agree, as far as he knows, that it is injurious to a well to shut it in. There are three ways it is injurious to a well to shut it in. You might kill the well altogether with water. If it is a paraffin base, those little crevices where the oil and gas comes from might become what we call leaded up, or closed up by the paraffin, or the substance that we call paraffin. If it is asphaltum base the same thing applies. Those wells are going to be injured. That has been our advice as long as I can remember, even back in the Pittsburgh field in Pennsylvania. Confining it directly to the Oklahoma City field, the condition of the sand on the west side of the field would perhaps not injure a well quite as much as on the east side where it is a lime formation. I would consider the well would be ruined if shut in 65 days.

The witness says at page 713 that the history of the wells is that when you reach the lime formation you are much more liable to get salt water than you are in the sand formation. In Oklahoma City those that have been shut in when opened again have not produced like they did when they were closed in. There has been more wells on the east side of the field that have decreased in production so that actual experience bears out the theory. He says shutting in these wells will have no tendency to conserve the oil, either for the use of future generations or for any other time. The losses from closing those wells would be so much more than the losses would be from the development of the wells so that in his opinion the shutting in of the wells causes waste rather than conservation; after the sands have been penetrated, it is much better to keep them open. These things are just as well known as the multiplication table. He says "We fellows who have observed those things and examined them have found that is true in every instance." He states this was true in Bartlesville, Glenpool and Ardmore.

At page 715 he says that when a field comes in there is always flush production caused by gas rock pressure, and gas pressure which is larger in the beginning and later recedes; if the wells are permitted to produce it keeps all the avenues open. He states at page 718 that he has observed the Hall-Briscoe well No. 1 which came in at 25,570 barrels and the flow was retarded by being closed in so that they are now able to get only 18,000 barrels; and on page 719 he says shutting in the well was what injured it.

At page 722 the same witness testified that he doesn't think there is any wastage of oil in this field at all; that he has never seen any; that the proration orders have not cut down actual physical waste.

The witness states at page 723 that when there is actual physical waste that is the fault of the one who owns the particular well which is governed by statute. He says [fol. 250] there is no reason why one should be penalized when he is not committing waste because some one is committing waste; there could be no erroneous waste in connection with the operation of this field if it were permitted to run wide open. At page 724 the witness says any producer should be sent to the asylum if he opened up his wells and let it run wild out into the field.

Mr. Boswell states at page 735 that when you cut off the production you are going to hurt the wells and when you hurt the wells you are creating a waste right there; you are wasting your own substance. Again at page 738 he says shutting in the wells to 25% would cause a waste and loss; by restriction as it is we will have ruined wells; again at 739 he says it would injure the wells to shut them in to 25%. At 740 he says the better way is to let it flow unrestrained if you want to get the full value; that it is better to let it run steadily.

At page 741 the following question was asked:

"Now, for the first time in this proceeding, I would like to ask you this: Having solely in mind the advantage of the people of the State of Oklahoma, and we will say the future generation of the people of the State of Oklahoma, as influenced or affected by our great natural resource, crude oil, which is the better way to conserve those interests, to let these wells run freely, except as restrained from physical causes, or to have them run under proration orders as they are now being run?

A. Well, the former, I should say, would be very much better.

Q. Now, why?

A. Because if you want to adjust this matter and get the oil that is already developed, you have got to let it run unrestrained. Now, that is going to run the price of oil down some, and when you do that, that is going to stop the fellows in the wildcat field, and there is the only place it can be regulated, because when you drill into an area or into a triangle like this and start development, you cannot stop that oil from flowing. If you do you are just as liable to ruin your well as you are if you drop something in it and ruin it."

At page 742 he says he thinks it would be better for the consuming public and also better for the state of Oklahoma as a state and an entity that these wells should be permitted to run open continuously, in the meantime restraining actual physical waste. At page 769 he states that he thinks the proration orders have increased waste by reducing the ultimate output of the well.

The same witness testified at page 777 that he doesn't think there would be any waste of oil at all if you opened

the Oklahoma City field wide open; it would go to markets and storage. At page 779 he says the average loss in storage is about 2% in steel tanks which you have lost but if you shut in a well you are going to lose 25 to 30%, maybe 50%, maybe all of it. He testifies at page 780 that he doesn't know of flush fields running oil down the creek; that wells got away at Cushing and Healdton just as the Mary Sudik at Oklahoma City and some oil was lost; that was an accident. At page 781 he says there is nobody that is putting oil in earthen tanks now and he knows of nobody who would if they opened this thing up; producers in no state whether they have proration or not is going to put it in earthen tanks.

[fol. 251] Mr. JAKE HAMON testifying at page 810 makes the statement "If this proration plan is put into effect we believe that it will save our wells from waste; if not, economic waste will certainly be obtained, because the small producer cannot afford to build steel tankage for his oil. The cost of the average tank for the average small production is prohibitive. Our production will be wasted.

Beginning at page 813, Mr. L. C. HIVICK says with reference to the waste of crude oil in the last 10 years in production or marketing that "the new equipment has cut out considerable, cut out, I might say, seven eighths of the waste of oil to what it was in the early days, such as control heads and gate valves, Christmas trees, and different ways of equipping them up. They have now all steel tanks, and we used to have all wood and they were leaking.

At page 810 he says if the proration orders were lifted, there would be no more waste than there is now. Proration orders do not affect waste. He states again, at pages 818-819, that he does not think lifting the proration orders will have any effect upon the matter of wasting of oil. He says he couldn't see where it would waste any more to lift the proration orders unless the man was just an outlaw and violated the orders that now and always have been here to preserve the state's resources.

The same witness states at page 823 that he doesn't think they would open up the wells and let it run out on the prairie if the quantity taken out was greater than the shipping facilities; he says he never heard of it in Cushing or

Seminole and he was in all of them; the only cases of that kind would be where the wells got away. He says they have not had proper equipment up until late years and some oil would be wasted until they could "harness" up properly. There would be some oil run down the creeks from the sun heating against the wooden tanks.

The witness says at page 824 that it has always been conceded that it hurts a well to shut it in; in some ways shutting in a well has a tendency to create waste of crude oil; you would get more oil, a lot more, if you keep your well open. As a matter of conservation he states as long as he could sell it he would let it run. At page 837 the witness states "I don't think they are wasting any more oil here because they have proration, than they would if they did not have it."

Ed Trippett testifying at page 859 says "as a general proposition I think that the closing in of wells will hurt them. Some cases it does not; more cases it does." There the well is producing some water and the gas pressure is weak to shut it in would ruin it in course of time. He says he has seen wells that were good oil wells shut in that were not making any water and when they opened them up for at least three weeks they would not make any oil at all, and others making both oil and water that never came back. Some were opened up in Oklahoma City that were not making any water and it did not seem to hurt them.

The same witness testifies at page 869 that if you want to conserve the natural resources of crude oil and prevent the waste thereof don't drill into it and if you have it would be better to get it out of there while they can; there is a certain amount of waste no matter how you handle oil.

Mr. Trippett states at page 873 that he thinks it hurts a well to shut it in if it is making any water at all. At page [fol. 252] 874 he says he thinks the south wells in the Oklahoma City fields are making water. He states again at page 881 that he thinks there is more waste under proration than without because oil is left in the ground that can never be recovered.

The witness states on page 890 that if he owned a lease from which he could not dispose of his oil although his neighbor could he would leave his in the ground. At page

901 he says he can sell his full production without causing any waste of crude oil.

At page 921, Mr. WILLIAM A. SPRINGALL, a representative of the M. K. T. Rd. Co. says if they were permitted to handle as much oil over their road as they might they could handle it without any waste of oil.

Mr. E. W. JONES, testifying at page 915, says that it is not the desire of any operator in the Oklahoma City pool or any other pool in the state of Oklahoma to waste crude oil; we naturally would not waste it and if run to full capacity there would be no waste; I would just produce and sell the amount of oil that I could sell; as a matter of business or enterprise and judgment, we would not permit it to be wasted, as a matter of economical waste we would not do it, or as a matter of physical waste we would not do it; every operator that is honest with himself will produce only the amount of oil that he can sell. At page 946 he states that he has heard a lot of them say that they would produce it right on the ground but "I have been operating a long time, and I have never seen it done deliberately."

At page 949 Mr. Jones says that it has been the general opinion of operating companies in the oil business in every field I have ever operated in, and I have operated in a number of them, that to shut in a well completely has been known to kill wells entirely; neither I nor any other operator in the Oklahoma City field knows "what the effect is to shut it in;" he says: "I know of one well in Texas that came in for 25,000 barrels per day, they opened it to fill their tankage and shut it off for additional tankage, they shut it off and opened it, and it has never produced a barrel of oil to this day." He says the pinch in is the recognized, modern and better way to do it because it keeps the channels open to the well. p. 950.

Mr. Jones, at page 983, in answer to questions asked by Commissioner Capshaw, said "I operated in Seminole and Bowlegs and Little River, and all of the fields of recent flush production in Oklahoma and I have not seen any wastage of oil since the days of Spindletop and Smackover and some of those big flush fields in Texas." And again at page 985 he states "I never did see any waste (refering to the Seminole fields). I drilled lots of wells there.

So far as physical waste is concerned in Seminole and Little River and Earlsboro and all of those fields, I never saw physical waste there, unless a well got wild, just like the Mary Sudik did." He states further that he had never heard, in his lifetime, of a man anywhere deliberately opening a well and running it on the ground and not trying to take care of the oil. He saw it run on the ground in earthen storage tanks and that was customary in Goose Creek and all through South Texas—they never figured that a waste. He said that would cause a lot of it to go down the creeks when they had a big rain just like storms killing people when you didn't expect it to come.

Mr. W. P. HOSEMAN testifying at page 997 says that where the wells are opened intermittently there is a loss [fol. 253] of from 10 to 20% which is not recoverable—that is, lost forever. He figures (p. 998) that 10 to 20% more would be recovered under the pinched-in method. Shutting in after reaching the oil sand results in wastage over what would be recovered in oil if the well were permitted to flow steadily, even though on a percentage flow. The orders in force result in a direct waste of the available oil underlying the Oklahoma City field, which would be underground waste of 10 to 20%. He says, on page 999, that the cause of the recoverable oil being decreased when the well is shut in from time to time over and above the amount it would be if permitted to flow all of the time although pinched-in is due to the fact that there has been established a pressure gradient reaching out to what we might call throughout the drainage area of the well. There is a pressure gradient. That means there is a release of both gas and vapor from the liquid. When the well is shut in, the area of drainage or the drainage volume has a decreased pressure in it which has to be equalized. That pressure is equalized largely by a continued release of both gas and vapor from the liquid, and the release of that gas and vapor, which would otherwise have remained there and kept the liquid in a state that it would flow relatively faster, is the cause of the loss in his judgment.

The witness, after having shown a wide and thorough research into the Oklahoma City field conditions, states on page 1001 "it indicates clearly a very rapid rate of decline in the rate of production of the average producing well in

the field." He says it indicates a material waste or loss otherwise recoverable oil and gas. He says the average decline of the average well from Dec. 30, 1929 to July 28, 1930 was from 9,323 barrels to 1,403 barrels which is abnormal and was caused in his opinion by improper completion and operation.

At page 1038 of the record, the witness states that he is convinced there would be a larger ultimate recovery of oil if there were a pinched-in flow rather than an intermittent. He states his opinion at page 1048 on the effect of the proration method of producing oil in the Oklahoma City field to be that the producing properties have been injured in that they will never yield the ultimate that they would have yielded. He says "my understanding of waste would indicate that it constitutes waste."

The witness states at page 1054 that they ran oil to earthen storage in the early days because they didn't know the results and it was sold on a different basis. He testifies that oil was run to earthen storage in the Smackover field in Arkansas.

At page 1057 the same witness states there would be from 1,500 to 3,000 barrels more per acre recovered if the wells were properly completed and properly operated. About one half of the loss is due to improper operation "under proration." At page 1090 the witness states that if one man were allowed to flow his well wide open and others were required to keep theirs closed on account of marketing conditions there would be a disproportionate taking and a loss in ultimate recovery under the same conditions which would constitute underground waste. He states the same thing again at page 1095.

Mr. Hoseman says at page 1104 that he has never heard of any one who purports to open up wide the wells in the Oklahoma City field, nor of any waste being committed in other fields, nor of any limitation if the transportation facilities. He states further that he knows of no reason why production in other fields should be lessened or restricted, nor of any reason why any good would be accomplished by such a proration order.

[fol. 254] The witness states again at page 1122 that he has never heard of any one who has insisted upon or advocated a wide open flow in the Oklahoma City field except loose talk.

At page 1146, Mr. CHARLES W. WILKEY says that the experience he has found from association with men that have been dealing in the oil game for 25 years or longer is that a well that has been shut off will cause the well to decrease in production. He says further at page 1151 that shutting down the wells caused a material decrease in production.

Mr. J. R. MCWILLIAMS, testifying at page 1175, states that he does not think the operation of the proration orders has caused a decrease in the ultimate recovery of the pool. He states that with higher overall pressure it is logical to assume that it would produce more oil from the field as a whole than it would if we had no proration orders.

The same witness states at page 1180 that the head of gas which has accumulated while the well is shut in and must blow off before any oil can be produced causes a loss of oil—which is lost as far as the oil production is concerned.

Mr. McWilliams states at page 1194 that the production would have had a higher recovery under the pinched-in flow than under the intermittent time flow which would be relatively true in the future. Again at page 1200 he says that on account of the intermittent flow method in operation those wells there has been a considerable loss in ultimate recovery. He states at page 1206 that if you wanted to get the largest percentage of ultimate recovery from the wells you would take into consideration the different conditions existing in and about the well and then govern your operations accordingly; as far as he knows none of the wells did run wide open.

The witness states at page 1207 that if the Oklahoma City field were allowed to flow wide open in his judgment it would cause underground waste to occur; market conditions would cause underground waste if the wells were wide open and an operator could not dispose of all of his production in the ordinary channels of commerce.

McWilliams testifies that he was in the Smackover field (p. 1208) and that there was a very big loss there (p. 1209), that the tanks were made of sand, they would wash out and absorb lots of oil. Earthen storage was used generally and conditions were such that there was a very high percentage of loss that took place about 1924 or 1925.

The witness states, at page 1212, that future underground waste could be eliminated by casing the well properly, pinching the well and proration. He says they might stream some of it off into the Mississippi River which would entail a loss and that to open this field (Okla. City) up would cause a terrific underground waste. He states at page 1213 that if "we" get 25% of our oil in the Oklahoma City pool we will do well while in Seminole they think they have gotten 40% of the recoverable oil. Again at page 1216 he testifies further that they will do well to get 25% of the oil and therefore we waste 75% of the energy and that is really only a small proportion of that 75%, a part of the energy can be saved by putting it on a percentage run rather than on an intermittent flow.

Mr. CHARLES JACOBSON testifying at page 1223 states that the company he is connected with, Barnsdall, operates in [fol. 255] the Osage and Seminole pools; that they have 93 wells in that locality and that there is no waste of crude oil in the way they are handling them; and at page 1224 he says they can control the wells so there will be no waste. At page 1225 the same witness states that they are using no earthen storage and does not know that they have ever used any and that he knows of none being used in the Osage or Seminole fields. He says further that he knows of no one "that is so operating a well to cause physical waste," nor of any operators who are operating in a way not modern and up to date in handling crude oil. He says he can cite this Commission that no waste is occurring that ought to have its attention, and that that is true in the Osage Nation.

Mr. CHAMPLIN, testifying at page 1235, says there was no waste in connection with the flush production in the Garber field. He says at page 1237 that they didn't open their wells up and let it run out on the ground because they did not want to waste it, that they have better sense. He says "I don't think they would any more open up their crude and let it flow out than they would open up their pocketbook and throw their money away." He states at page 1238 that proration in the Garber field would not in any way tend to reduce the waste of crude oil nor tend toward conservation, having in mind the ultimate recovery.

The witness states at page 1245 that as far as his experience and observation goes in the Seminole pool there is no waste of crude oil over there in any way. At page 1263 he says he knows of no waste of crude oil being committed in the Oklahoma City field nor of any waste being committed in connection with the production of crude oil anywhere in the State of Oklahoma. At page 1264 he says shutting in a well is very injurious; that wells are sometimes destroyed or lost by shutting them in and keeping them shut in.

Mr. Champlin says at page 1270 speaking of the Deaver pool that it can be produced at 100% of its possible production without waste.

At page 1291 the witness states he has heard of earthen storage but not lately, not in his time; that he doesn't think anybody would put it in earthen storage. He states at page 1292 that he has seen oil in earthen storage in the Beggs field but that was caused by a well coming in for a large amount and they were unable to take care of it so they temporarily put it in earthen storage and withdrew it as soon as they could get a pipe line into the field. He says he doesn't think that would be done in this field (Okla. City); 10 or 15 years ago they were not as well equipped to take care of producing wells as they are now; they didn't have control gates and often wells were brought in for a big production when they were not expecting it and the oil would go to waste.

The witness states at pages 1301-2 that he is in favor of producing the wells wide open; that he thinks that is an economic way to produce oil and will not result in underground or surface waste; that there can be no underground waste. He says at page 1314 that he wants to commit no waste of crude oil and will not; that if a person did not have the market or could not sell his oil he would shut it in; that they don't have to waste it.

Mr. William H. Atkinson, testifying at page 1341, says that in his opinion shutting in the wells under the time [fol. 256] plan does not injuriously affect the wells, that is the sand wells in the Oklahoma City field; some wells might be making water and it would hurt them and that in certain conditions it would pour water in and hurt the other fellow; it would pull the water in and in time affect the whole field, particularly the North and where he is interested (p. 1342).

Mr. JOHN FULLER, testifying at page 1347, says "beaming down the well—and this is general in every sand in the field, additional back pressure on the well increasing the gas-oil ratio would thereby reduce the ultimate recovery"; again at page 1351 he says "for the purpose of the largest ultimate recovery, I believe that intermittent flowing is better than pinched in."

Mr. WILLIAM H. ATKINSON, testifying at page 1357, says if the proration were lifted he would probably run to open tanks, earthen storage, closed storage, or anything else he could get; at page 1358 he says he doesn't know of anyone doing that now—because they prorate it; in the fields that are not prorated nobody is letting their oil run to waste but with the Oklahoma City potential they would.

Mr. C. C. CARLISLE, testifying at page 1385, says he has seen indications of opening up wells and letting them run out on the pra-rie down the streams, or into earthen storage but not recently; that the Prairie Oil & Gas Co. does not do that intentionally; that improved methods have been developed to prevent a wasteful flood of oil; sometimes they cannot control them but they do as soon as possible.

In the testimony before the Corporation Commission in Case No. 10,326-13 relative to amending order No. 5292 so as to shut down the Oklahoma City field until those wells which are under-produced catch up with those that are even the references to waste will be found on page 115 where Mr. Franklin testified that to force the operators to take any price for oil would result in great economic and actual waste; and on page 202 where Mr. Smith testified that to shut the wells in for a period of from 60 to 120 days would injure them materially, that is that the eventual recovery of oil would not be as great as it would otherwise, so that instead of preventing waste it would result in actual underground waste; and at page 206 where the same witness says that the wells which they compel to shut in will be materially damaged, and again at page 214 he says "in my opinion, proration has injured the field"; and at page 220 that the proration orders shutting in these wells at various times has materially damaged the wells which has caused a material loss of oil that cannot be recovered.

[fol. 257] Defendants-appellees' controverting abstract of the testimony taken before the Corporation Commis-

sion as to waste was in a large part in the exact words of the witnesses; and same being now reduced to narrative form, is as follows:

RAY M. COLLINS (p. 65) qualified as a producer of oil, in actual control of producing properties in Oklahoma since 1904, and the umpire of the Corporation Commission under the present and previous proration orders. After giving figures as to production and potential and on other matters, he testified that, speaking in a general way, the tankage of oil in the United States is approximately full; that if crude oil is permitted to be produced without restriction under the conditions of demand and potential which he gave, then, from his past experience he would say there would be actual waste of crude oil. My reasons for making this statement are that I have had production in the Cushing pool and other new pools where there was an over-production, and at that time we let it run down the creek; we could not take care of it, and our neighbors were running theirs through the pipe lines. There is no considerable amount of available tankage in the State of Oklahoma. If there is no steel or wooden storage or no appreciable amount thereof in which oil can be stored, and if crude oil is permitted to be produced in Oklahoma without restriction, taking into account the figures as to market outlet, market demand and potential which I have given, it is a necessary result that oil must either go into earthen storage or be entirely wasted. In most cases oil that is put into earthen storage is lost anywhere from fifty to ninety per cent, due either to evaporation or the oil going down through the soil, and nine times out of ten a rain coming and washing away your dykes. If the Commission should see fit to find that a proration schedule was necessary in order to prevent waste and one producer in a pool was permitted to produce a higher percentage of his potential production than another producer, it would simply mean that he would get the drainage and the other fellows would lose a certain amount of their oil which they would never be able to recover. Oil in Oklahoma is commonly produced from what is known as a sand formation, although there are some lime formations, but in every instance the oil and gas are moveable or migrating fluids. There are not sufficient transportation facilities in the Oklahoma City pool to take care of

the total potential of the pool if the wells were allowed to be opened up. I believe at the present time the total pipe line outlet, not referring to market demand, but to the capacity of the lines is about 180,000 barrels daily. There have not been considerable shipments by tank car or other means than by pipe lines from the Oklahoma City pool to date. With a potential of 2,800,000 barrels and a possible outlet of 180,000 barrels, even if supplemented by railway and taking into account the possible refining capacity at Oklahoma City, it would not be possible for the potential production of the Oklahoma City pool to be taken care of and transported to the refining markets.

With reference to proration in the Osage Indian reservation, referred to at page 2 of the plaintiffs' abstract, the following is found at page 179 of the testimony:

"By Commissioner Hughes: This Commission has no jurisdiction over the Osage Nation. Of course, it could ask the Secretary of the Interior to go along and prorate the proposition.

"Mr. Cooper (of counsel for a protestant): I quite agree with the Commission.

By Mr. Cooper:

"Q. Does that apply also to restricted Indian lands outside of the Osage reservation?

[fol. 258] Commissioner Capshaw: You are really asking a legal question here that the Commission is not prepared to answer. If the Commission has power to prorate the Osage or any other restricted Indian lands, if they make a proration order they will make it apply to them; and if we don't have the power we won't. If we don't have the power we will probably ask the Secretary of the Interior to go along with us in the order."

Victor H. Smith, called as a witness by the opponents of the order, testified in addition to the matters set out in plaintiff's abstract, as follows (p. 270 of the transcript):

"A. I don't believe there has been any refinery closed down as a result of proration in the Oklahoma City field. * * *"

Mr. Smith, after testifying that the result of lifting proration would probably be a drop in the price of oil, stated (page 272):

"These little boys with their 5 or 6 wells, I don't know what in the world would happen to them. There are more of these than all the refiners in Oklahoma. I think if oil goes to 50 cents the big companies will buy all these little wells and put it in storage—buy all the oil they can get. They have done it in every other commodity when the price goes down low. They provide storage and before it goes to 50 cents they will probably build a lot of tanks to put it in. I think it is natural to expect that they would do it, but there would be a waste in the storage of oil in steel tanks or earthen tanks."

There always is. At page 295 he testified that if proration were lifted, the producer who had no pipe line connections and no refinery could find a market for only a limited amount, and there is no question but that the integrated producer would get a disproportionate amount of the oil.

George Dye, in addition to the testimony on page 6 of plaintiffs' abstract, testified that undoubtedly there would be disproportionate taking by some operators as against others; there would be some operators in the field that would not be able to run their oil at all, and their neighbors would be running their wells and the result would be that one operator would take oil that would come out from under another operator's lease.

E. B. Reeser testified that he was president of the Barnsdell Corporation, owning both refining and producing companies in practically all of the oil producing states, and that he was president of the American Petroleum Institute, having a membership of about five thousand, and whose function it was to collect statistics in regard to the production, sale, and disposition of crude oil and its products, and that he had been engaged in the oil and gas mining business about 37 years. After giving various figures as to consumption, demand and production, Mr. Reeser testified that there is decidedly an excess of production over the reasonable market demand for oil in Oklahoma, and that in his judgment if there were not a proper proration order by the Commis-

sion, a condition of actual and economic waste would result because the markets which can be reached by Oklahoma producers or refiners is limited to the territory where other producing areas exclude it, "and we know by our efforts, that the amount suggested in the order, 530,000 barrels is the maximum that can be marketed." With the potential figures that have been given here, and that being the maximum that can be marketed, if production were in excess of reasonable market demands a condition of waste would undoubtedly follow. Putting oil in steel tankage is waste. "I think they have arrived at the day where every commissioner should prohibit putting additional quantities of oil in steel or other storage."

[fol. 259] C. C. HERNDON testified that he is Vice-President of Skelly Oil Company, engaged in the refining and producing of crude oil, and chairman of the Oklahoma Proration Committee of the Mid-Continent Oil and Gas Association, and that he had been engaged in the oil business since 1914 (pp. 397-403) and he states that in his judgment if there were not a proration order in effect or one were not continued in effect, there absolutely would be actual waste of crude oil in the State of Oklahoma, and that he considers such a waste imminent if no such order be made; and that the potential production of oil in the State of Oklahoma is largely in excess of the reasonable market demands therefor.

A. V. HOENIG testified (p. 456) that he is Vice-President of the Indian Territory Illuminating Oil Company, engaged in the production of crude oil in Oklahoma, and has been in the oil and gas mining business for about thirty-three years, and has been in charge of the Oklahoma City field production for the I. T. I. O. since the inception of the field, and that he does not believe the full production of the Oklahoma City field would be produced without waste and that in his judgment a continuation of some sort of proper proration is necessary to prevent waste in said field. He testified that the basis for the conclusion is that "to produce this field without restriction or proration would result in a very material waste of oil and gas." There are not physical facilities for storing oil in the field sufficient to take care of the production, and there is not a demand in

the field for most of the production. The demand and the facilities together are not sufficient to take care of the production.

OTTO BRADFORD (p. 531) testified that he is the umpire for the Oklahoma City pool and has been engaged in the oil and gas business ince 1913; that in his judgment the Oklahoma City field cannot be produced at its maximum production without physical waste because there is no way for a good part of the oil to be handled. "No way to get it out." He stated that he thinks that if the wells were all producing, it would necessarily result in earthen storage or actual escape down the streams. Practically all storage in the Oklahoma City field is full at the present time.

J. R. TRAVIS, a witness called by the opponents of the order, in addition to his testimony as summarized in the abstract of plaintiffs' testimony, testified (p. 580): The whole trouble is not proration—it is drilling. At page 630 he testified:

"Well, to open this field up out here (the Oklahoma City field) in my judgment, with the heavy gas pressure, to open them entirely, I think you are hurting your wells; to pinch them in I think you are helping your wells; to let them flow some all the while."

A. V. BOSWELL (considerable of whose testimony is abstracted by plaintiffs) claims to be a hydraulic engineer, petroleum engineer and mining engineer (p. 708). He testified that he was not a graduate of any school at all (p. 749); that he has a small interest in one well in the Oklahoma City field but was not the operator of the property on which it is situated; that he had not operated any property in Oklahoma in the last ten years (p. 754); that he did not have any client employing him as a petroleum engineer and that he had not had any such client within the past ten years (p. 756); that he thought under certain conditions paraffin would clog up the "pours" in a well, but that he did not know the temperature at the bottom of any well in the Oklahoma City field and was sure that the "melting temperature of paraffin" is 212 degrees. (P. 758.)

JAKE L. HAMMON (p. 810) made a statement voluntarily upon his own account, saying that he has individual production in five fields in Oklahoma; that he represented the Crude Oil Producers Association of Southern Oklahoma, which represented a total of 2,658 wells in 13 fields; that the association had had several meetings and that he appeared for it. He testified (p. 810) that if this proration [fol. 260] plan is put into effect he believed it would save their wells from waste, and if not, economic waste will surely result because the small producer cannot afford to build steel tankage for his oil; that the cost for the average tank for the average small producer is prohibitive. "Our production will be wasted." He stated that if we are put under proration we are satisfied as "being the best solution for our difficulty—to prevent shutting in our wells or such other condition of waste as would take place." In view of the circumstances and conditions prevailing in the oil business, the proposed order is about the most equitable and fairest proposal that could be made.

W. P. HASEMAN, a witness for the opponents of the order, testified (p. 1077) that on an average and speaking from the standpoint of the ultimate recovery of oil from a pool, the very worst method by which it could be operated would be to open all of the wells all of the time. "I think production data will support that." I mean by that to leave the wells wide open. The best method on the average, of producing from the pool as a whole, having in view the ultimate recovery, would be to operate the wells all of the time, but under a back pressure, or as is commonly known, a pinched-in method. On the average it is true that a method of opening all the wells in any pool and allowing them to flow wide open will result in a loss in the ultimate recovery. That loss constitutes underground waste. At page 1090 Dr. Haseman testified that if some of the wells in the field were permitted, by reason of marketing facilities, to flow wide open, while others were required by the same conditions, to be closed, either wholly or partially, there would be a disproportionate taking between the two classes of wells. Under those conditions, an underground loss in ultimate recovery would occur. That would constitute underground waste. If the proration orders were lifted and the field (referring to Oklahoma City field) were allowed to

operate without restriction, and either letting the wells flow wide open, or such of them flow wide open as had a market outlet, and others remain closed in, there would be a loss in ultimate recovery over what would be recovered by a proper method of operation. This would extend through the pool as a whole, and would result in an underground waste in the entire field. He further testified (p. 1119) the wide open method of production is the most wasteful.

CHARLES W. WILKEY (some of whose testimony at pp. 1146 and 1151 plaintiffs have abstracted) testified (p. 1147) that his experience in the oil business was from association with others; that he was with a Mr. Page for eighteen months in the production business, operating pumping wells, working on a lease at Sand Springs. That you shut in a well for three or four days and it will show a decrease in production. He stated that he was with Marlin & Company in Borger, Texas, and that his only experience was working by the day. He further testified (p. 1152) that no man on earth would know what would be the cause of the loss of pressure in the Wilkey-Anderson wells or any of them; whether it was the result of shutting them in under proration orders or some other cause, particularly the fact that a large number of wells in the same gas bearing horizon have been running open. He testified:

"Q. Now, do you think that you are really, from what you know of things, honestly do you think you are competent to say what the cause of that loss of gas pressure was?

"A. Well, as I say, I don't believe that no man could intelligently say what was the cause of it,"

J. R. MCWILLIAMS testified that he is a production engineer, a graduate of the University of Michigan, had about twelve years' experience, is employed by Skelly Oil Company and has been in close contact with the Oklahoma City field since September, 1929, and has made studies of the various wells in that field. Referring to the Wilkey-Anderson well about which Mr. Wilkey testified, he stated that there had been gas withdrawals in the neighborhood thereof, and a very rapid decline in gas pressure. That said decline in gas pressure was not due to a shutting in of the wells under the proration orders. He further testified that he did not think, speaking of the pool as a whole,

that the operation of the proration orders or the production under the proration orders had decreased the ultimate [fol. 261] recovery from the pool. When asked why he did not think so he testified:

"Q. Why do you think it has not?

A. Well the customary method without any order—any proration order in that area, would have been to, after the discovery well, was to start some offset locations. While these offset locations were being drilled the discovery well would have produced wide open and would have caused a depletion in the pressure in the surrounding area until the time when the offset wells were drilled in.

At that time another line, or two or three lines of wells would have started around the center, and the result would be that the center group of wells would draw the energy, the gas energy, for a considerable distance, so that when the wells which came in, if there was oil in the same horizon they would find a depleted sort of energy.

Consequently the wells drilled at a later time would produce less oil than they would have had it been possible to have drilled them at the time of the discovery well. Under proration it has been possible to drill the field and find a higher average of the pressure that would have been the case without proration. With higher over all pressure it is logical to assume that it would produce more oil from the field as a whole than it would if we had no proration orders.

Now there is one other reason that seems quite important to me, and that is, proration in my opinion has held back water encroachment. The lime area had bottom hole water, while the sand area has edge water. That is, we can drill through the sand in a great many cases and do not find water in the bottom of the sand.

If you continue drilling through the sand on down to maybe the Arbuckle lime, you will find water, but you don't find it in the bottom of the sand, but the water is found on down in the slope. Now, the great plague of the oil business is the salt water encroachment. Whenever you can hold back salt water you can feel pretty sure that your production is going to keep up, because when salt water hits a well there is a very rapid decline.

Now, by proration we can deplete the filter of its energy slowly. If you deplete its energy rapidly the water will filter in, and ultimately when it reaches the well, and if it breaks into the well, it is very difficult to ever stop it, and when it filters in its pockets big volumes of oil. So by proration we hold this water back.

Now, time proration, it might seem, would not hold the water back, but if you will consider what might be happening at the bottom of the well. You open up a well 12 hours, 24 hours, 36 hours, or whatever the order happens to call for. You create a lower pressure at the bottom of the well, and this pressure diminution you might say goes back a distance in the sand, but under the short open period, even up to 36 hours, I don't think that pressure can extend—the effect of that diminution of pressure can extend at a very great distance.

[fol. 262] If you will consider that there is a big wave of diminution started at the well. As it gets out to the water, you might say that there is a lessening down at the water encroachment that can under my opinion approach that well. Therefore, I say that if proration has held back water encroachment, that is the biggest single thing that you can do to increase your ultimate yield.

The rule is that in many cases when we open a well on time proration, that the well produces a head of gas, although there are many many exceptions to that, and assuming that it does produce a head of gas, it follows as a line of reasoning that as it produces gas and does not produce oil, that it should have produced oil, and therefore there is a wastage, but in my opinion the wastage would have been many times greater had we allowed this well to flow open.

So I believe I can say to this Commission in my opinion that it was much better to have closed the Oklahoma City wells on time proration than it would have been if we had let those wells flow wide open."

Mr. McWilliams testified further (p. 1179) that gas will travel a mile through the gas producing sand. He testified (p. 1183) that he believed that a percentage flow was better than intermittent production. At page 1207 he testified

that he is very firmly convinced that there would be an underground waste in the Oklahoma City field if the wells were allowed to be flowed wide open; that underground waste would result if the market conditions were such that the full open flow of the field could not be had and the conditions were such that an operator could not dispose of all of his production in the ordinary channels of commerce.

Mr. McWilliams further testified (p. 1211) that he had had experience in surface waste in fields where there was more oil produced than there were market facilities for it; that he had been in the Smackover field (in Arkansas) in 1924 and 1925 during its development, and that there was as much oil run into the pipe lines as they could handle, and the rest of it went into storage and by far the largest bulk of the storage was earthen storage and that there was a very big loss there. That the earthen storages were not confined to any one operator, but it was rather general; that the big pipe line companies bought oil and stored it in earthen pits. "At least I know of a tremendous tank farm that must have had a million barrels of oil that belonged to a Company that operated a pipe line out of the field." There were many operators in that field. He stated that in his judgment a like condition or a similar condition would result in the Oklahoma City field if it were opened up. Future underground waste in the Oklahoma City field could be eliminated by casing the wells, pinching the wells and proration.

CHARLES JACOBSON testified (p. 1218) that he is superintendent of production and drilling of Barnsdall Oil Company; had 19 years experience in the oil business and has under his charge at the present time approximately 500 wells. That in addition to the wells of his own company he had observed the properties of other companies throughout the fields in Oklahoma; that many of the wells under his control make salt water and that he could not see that it hurt the wells to either pinch them in or shut them in. "In some cases it is a benefit to them." Either pinching in or shutting in, according to my experience, does not have any effect so far as salt water is concerned, on these wells. "I can cite several instances. I think it occurs with all operations. You go in on a fishing job, a salt water well,

it will last thirty days and in a week or so you get your well back; it is about the same as it was before. When [fol. 263] you get *get* the salt water out, the well will come back in the same general way. "I might *sight* the case in the St. Louis field. Large quantities of salt water. Just recently, we shut down for a period of fifteen days and were making 600 barrels of water and 300 barrels of oil. Fifteen days after the shut down we had 412 barrels of oil and 760 barrels of water." I have noticed no ill effects whatever with wells of small production, say ten to fifty barrels, from shutting them down.

H. H. CHAMPLIN (p. 1236), in addition to his testimony referred to in the abstract of the plaintiffs, in testifying with reference to steel storage stated that it is the most approved method. "There is some waste." In speaking of the handling of the Garber field in which he had testified there was no waste, the witness said that the production was taken care of in storage and by pipe lines and often wells were pinched in and held in abeyance until facilities were great enough to take care of the production. At page 1263 he testified that he would hate to say one way or the other as to what the effect of the proration orders would be upon the amount of crude oil that can be ultimately recovered from any of the fields. Under proration it certainly would prolong the life of the fields, but there is so much oil in the fields, "I am of the opinion that in the long run some one will get that oil. It may not be me, but somebody will." Explaining his ideas of waste, Mr. Champlin at page 1303, testified that there would be no waste if a pool were operated so that it would only recover one-half of the oil that might have been recovered under other operating conditions; that there would be a loss of recovery but not waste. "You cannot waste anything you do not have; that you do not possess." "Well, I said there could be no underground waste of oil because there can be no waste of something you do not possess." At the hearing on November 20, 1930, Mr. Champlin (record of said hearing, page 35) having been asked as to his recommendations, testified:

"Q. If you did not have your wells in, would you still make that recommendation??

"A. I would let them flow wide open to the capacity of the pipe lines to take them out of the field. I would make the pipe lines take the oil proratably."

L. W. WINKLER, owner of an interest in a company having a well in the Oklahoma City field near which were wells of others, testified with reference to the amount of production from the well of his company that it showed an increase in production on two occasions, and that on both occasions the neighboring wells were closed a day ahead of those of his company, and he stated: "any time we begin flowing our wells the next after these offsets are closed we get our production quicker, and we don't have to have them open so long after that to get onto normal oil." He stated that this absolutely indicated that there was some connection between the wells of his company and the offset wells.

WILLIAM H. ATKINSON (p. 1341) testified that he is a graduate of the University of Oklahoma in petroleum geology and has been engaged in oil field work for 14 or 15 years; that he is interested in 28 wells in the Oklahoma City field, owning a half interest in the leases on which they are located; that he owns a royalty interest in 100 wells therein; and that he has made a study of the Oklahoma City field since its inception, working at it from 12 to 20 hours a day. He further testified that he does not think the shutting in of wells under the time plan under the proration orders has injuriously affected the wells; that he had made some studies to determine whether or not they were injured; that he had taken the gas-oil ratio and production of every one of his own wells and a great number of others. At page 1357 he testified that if proration [fol. 264] were lifted and the field opened up and his neighbors had facilities whereby they might dispose of their oil and the market demand was not such that he, the witness, could dispose of his, he would probably, until the Corporation Commission stopped him, run his oil into open tanks, earthen storage, closed storage, or anything else he could get. He stated that he would not want to violate any law, but at the same time "I realize that oil is fugacious, or very much migratory. I would not want to sit idly by and let them take it like that. I would have a little fun as

I went along." He stated that his net potential production in the Oklahoma City field, as near as he could estimate it, was 150,000 barrels per day. He testified:

"Q. Suppose then, a man like Mr. Champlin who has testified here, has a legitimate offer, say for his oil, and he is using it for that offer and legitimate purpose, and because of that fact, if you had wells nearby there, would you open those and let them run, regardless of whether you could sell it or transport it?

"A. I certainly would."

O. C. CARLISLE (p. 1381) testified that he is a production engineer, a graduate of Washington State College and engaged since 1901 in engineering work; that his present occupation is recording the production of oil for The Prairie Oil and Gas Company in Oklahoma, Texas and other fields. That the data had been taken over approximately 51 districts, and that many of the wells upon which the data was taken made salt water. He stated that this data shows that the intermitten complete shutdown of wells does no injury whatever so far as his company could tell, and in fact in most cases the production was slightly increased.

J. R. MCWILLIAMS, recalled as a witness at the hearing before the Commission on November 20, 1930, testified that he thinks it possible after a field has been produced, as the Oklahoma City field has, and observations taken such as have been taken in that field, to specify a rule of production which will result in a greater ultimate yield in a pool as a whole than would be "under a wide open production plan." He stated that he thinks the proration orders are beneficial to that field as a whole so far as the ultimate yield is concerned, in view of the lease ownership and the amount of drilling that has been done in said field, and that he thinks that proration orders will show a greater recovery of oil then if no proration orders had been made by the Commission.

JOHN FULLER, testifying at the November 20, 1930 hearing (page 72 of the record thereof), who had previously testified that he was a production engineer and in charge of production data for the I. T. I. O. in the Oklahoma City

field where they have some 325 to 330 wells, and after having testified as shown in the plaintiffs' abstract of his testimony, said that he believed the ultimate recovery in the Oklahoma City field will be greater by reason of the proration orders than it would have been if no proration orders had been made. At page 87 he testified that he is sure that a method of proration of the oil that may be produced from the Oklahoma City field can be reached which is reasonably fair to the operators in the field and will result in an increased production from the field as a whole over what would be had by a continuous open-flow of the wells, and that, as a matter of fact, his experiences there have proven that the orders of the Commission have proven to be reasonable close "to that ideal condition."

(End of Appellants' abstract of testimony before the Commission.)

[fol. 265] At the insistence of defendants-appellees the testimony of the following witnesses introduced on their behalf by affidavit is included in this narrative:

[fol. 266] The affidavit of Ray Lyman Wilbur, introduced on behalf of the defendant-appellees, states:

That he is the Secretary of the Interior, and the Chairman of the Federal Oil Conservation Board, a Board constituted and appointed by the President of the United States on December 19, 1924, and consisting of the Secretary of the Interior, the Secretary of War, the Secretary of the Navy, and the Secretary of Commerce.

The duty and purpose of this Board includes the gathering and compiling of information relating to supply and production of oil and gas and the intelligent conservation and use of the oil supplies of the United States. In constituting this Board, the President of the United States commented upon the excess production of oil in the United States, i. e., the production of these minerals in larger quantities than required by current needs, either for use or reasonable storage.

In a written report made February 25, 1929, the Board stated to the President—"The excess production commented upon by you when you created the Board in De-

ember, 1924, unfortunately continues." The data secured by and available to this Board indicates that up to this date the same condition of excess production exists; that this surplus production and resultant waste of these resources, both economic and physical, would at this time be very much greater were it not for conservation measures adopted and enforced by various State oil and gas commissions, voluntary reduction or cessation of production by oil producers and conservation measures adopted and carried out either by agreement or otherwise by the Department of the Interior. The policy of the Department of the Interior adopted in March, 1929, and still being enforced, is to withdraw the public lands from issuance of new prospecting permits under the general leasing law and to grant extensions of time in the case of permits issued prior to the adoption of the policy on express condition that no drilling be done for periods of from one to two years. The Kettleman Hills Oil Field in California, the largest and potentially most productive field in which the Government owns a large area of public lands, has had my personal attention and I have made several trips to the field in the effort to postpone drilling and conserve the oil and gas therein.

An agreement for the deferment of production in this field was negotiated, signed by the permittees, lessees, and private owners in the field, and myself, and is now in force. The policy now in effect with respect to the public domain is the outgrowth of the general excess production of oil to the extent of economic waste, well known to the public. The President has publicly expressed his desire to conserve the oil underlying the public domain for the general benefit that will ensue as well as to prevent extravagent waste. It is an administrative policy which as an economic measure in the handling of public lands lies in the judgment of the officers of the Executive Department. Its purpose is to protect both the Government and the public.

The coal deposits and phosphate, sodium, and shale deposits of the United States are of such vast extent and so little used that no particular need for their conservation or limitation exists. They are of such nature that little waste is likely to occur in their mining or handling. The reverse is true of deposits of oil or gas. The latter minerals

have long been regarded as an exhaustible resource in widespread use and demand and particularly subject to waste or destruction. A gas well brought in and uncontrolled may daily waste enough fuel gas to supply a large city's every need. Oil wells have been known to waste [fol. 267] thousands of barrels when not subject to proper control. Even when saved and stored in tanks or reservoirs, there is a substantial and continuing loss of the more valuable elements due to evaporation. Economic as well as physical waste, was and still is a characteristic of the oil industry.

It is a well recognized fact, proven by statistics, collected and published by Governmental agencies, including the Federal Oil Conservation Board, by the oil industry, itself, and others, that the past year or two have witnessed a period of great excess production of oil and gas. And in the judgment of the Executive, the public interest as well as the good of the industry demanded a temporary suspension of indiscriminate prospecting and producing from the public lands.

The Federal Oil Conservation Board has used and is using its best endeavors to further the conservation of the national oil and gas resources and to discourage their overproduction and waste. Its authority and usefulness have been recognized by Congress through the appropriation annually since 1924 of money for its use and support. Conditions existing at the present time with respect to the production of oil and gas are matters of public knowledge and show that—

1. More oil was and is being produced in the United States than is required for current needs, emergency purposes, and reasonable storage.

2. Petroleum producers cooperating with the authorities in the various oil producing states, with the Federal Oil Conservation Board, and with the Secretary of the Interior, have entered into arrangements for the curtsilment of production of oil from certain fields on privately-owned and public lands because of the present oversupply of oil.

[fol. 268] The affidavit of George Otis Smith, introduced on behalf of defendants-appellees, states:

"That I was born on February 22, 1871, that I was graduated from Colby College, Maine, in 1893, with the degree of A. B., and from the same institution received the degree of A. M. in 1896, and that I received the degree of Ph. D. from Johns Hopkins University in 1896, with geology as my major subject:

"That from 1893 to 1906 I was engaged in geological work in Michigan, Utah, Washington, and New England; that I was an assistant geologist and geologist of the United States Geological Survey, Department of the Interior, from 1896 to 1907, and that I have been the Director of the United States Geological Survey, Department of the Interior, since May 1, 1907, except from September, 1922, to September, 1923, when I was a member of the United States Coal Commission; that I am a member of the Geological Society of America, of the American Association for the Advancement of Science, of the American Institute of Mining and Metallurgical Engineers (Pres. 1928-29), of the Washington Academy of Sciences, of the Mining and Metallurgical Society of America, of the society of Economic Geologists, and of the American Association of Petroleum Geologists; that I am the author of reports on areal, economic, petrographic, and physiographic geology in publications of the United States Geological Survey, Department of the Interior, and also of Numerous miscellaneous papers and addresses related to natural resources and economics.

"That as administrative head of the Geological Survey, a scientific bureau in the Department of the Interior, I am specially interested in the general subject of conservation of natural resources with particular reference to oil.

"That from 1914 to the present I have written many articles and made many addresses on different phases of oil conservation.

"That the general thesis in these public statements has been a plea to stop waste, both physical and economic, by stabilizing production, through voluntary restriction and self restraint, if possible, if not, by State and Federal regulation.

"That I urged before Congressional committees the leasing of oil lands as better protecting the public interest through extending life of deposits over a longer period;

and sat as adviser with Congressional committees framing the Federal legislation of 1920 and amendments thereto.

"That beginning in 1909 I recommended the withdrawal of public oil lands, in aid of and preparatory to legislation and, through the Secretary of the Interior, recommended to Presidents Taft and Wilson the creation of the Naval Oil Reserve.

"That in March, 1924, I was appointed by President Calvin Coolidge as the chairman of the Naval Oil Commission to advise the President on the future supply of fuel oil for the Navy.

"That this commission was referred to in the President's letter of December 19, 1924, creating the Federal Oil Conservation Board as follows:

[fol. 269] " 'To the Secretary of War, Secretary of the Navy, Secretary of the Interior, Secretary of Commerce:

" 'Sirs: It is evident that the present methods of capturing our oil deposits is wasteful to an alarming degree in that in that it becomes impossible to conserve oil in the ground under our present leasing and royalty practices if a neighboring owner or lessee desires to gain possession of his deposits.

" 'Developing aircrafts indicate that our national defense must be supplemented, if not dominated, by aviation. It is even probable that the supremacy of nations may be determined by the possession of available petroleum and its products.

" 'I am advised that our current oil supply is kept up only by drilling many thousands of new wells each year, and that the failure to bring in producing wells for a two-year period would slow down the wheels of industry and bring serious industrial depression. The problem of a future shortage in fuel and lubricating oil, not to mention gasoline, must be avoided or our manufacturing productivity will be curtailed to an extent not easily calculated.

" 'We are not today, however, facing an undersupply of oil. The production of our 300,000 wells is in excess of our immediate requirements. That overproduction in itself encourages cheapness, which in turn leads to wastefulness and disregard of essential values. Oil, of which our resources are limited, is largely taking the place of coal, the supply of which seems to be unlimited, but coal cannot take

the place of oil in most of its higher uses, on land or sea or in the air.

"'For the purpose of giving this responsibility of government in all of its aspects the consideration it demands, I have constituted a Federal Oil Conservation Board consisting of the Secretaries of War, Navy, Interior, and Commerce, to study the Government's responsibilities and to enlist the full cooperation of representatives of the oil industry in the investigation. The Government itself is at present one of the largest lessors of oil lands, and the public domain still includes large undeveloped reserves of oil, so that the administration of oil resources is a practical question with the Department of the Interior.

"'I would express the desire that these conferences may be open and exhaustive. The oil industry itself might be permitted to determine its own future. That future might be left to the simple working of the law of supply and demand but for the patent fact that the oil industry's welfare is so intimately linked with the industrial prosperity and safety of the whole people, that Government and business can well join forces to work out this problem of practical conservation.

"'Last March I appointed a commission to advise me on [fol. 270] the special subject of the best policy to insure the future supply of fuel oil for the Navy. That commission will continue to function in its limited field and might to advantage sit with the Conservation Board in the conferences I expect will be between these four Secretaries directly concerned and the outstanding producers of petroleum. Similarly, the members of the Conservation Board will call upon their technical advisers in the bureaus to contribute to the full discussion of ways and means of safeguarding the national security through conservation of our oil.

"'Very truly yours, (Sgd.) Calvin Coolidge.'

"That when the Federal Oil Conservation Board was organized I was designated by the Secretary of the Interior to serve as his representative on a technical and advisory committee under that Board, and since then have served continuously as the chairman of that committee, the principal function of which committee has been to assist the Board in its study of crude oil supply and demand for

petroleum products; that advisory committee with its membership of engineers from four executive Departments represented on the Board has largely assisted in the preparation of the four reports submitted to the President: Report I, dated September 6, 1926, Report II, dated January 16, 1928, Report III, dated February 25, 1929, and Report IV, dated May 28, 1930, which reports have been published as public documents at public expense under authority of Congress.

"That my connection with the Federal Oil Conservation Board has necessitated a continuous review of current activities of the oil industry, attendance upon technical and commercial meetings of oil and engineering organizations, study and analysis of statistics of oil production, and frequent visits to the principal oil fields of the United States.

"That reports of the Federal Oil Conservation Board have included summary statements of pertinent facts gained in the course of investigations under my direction and have presented specific recommendations based thereon.

"That in Report I (1926), the Board urged (p. 9) 'Better control of the flush flow from newly discovered fields,' discussing this subject more fully on pages 11 and 13 to 20; on page 11, the need of better control of production was thus referred to:

" 'At the initial opening of new fields the gas pressure is strong and the flush flow of wells is very large, rapidly diminishing to more settled production, and the opening of new fields is in most instances followed by a fever of drilling. Due too often to divided ownership in small areas, the drainage of which is threatened by adjacent wells, a rush of drilling leads to enormous flush flows which temporarily glut the market and force much oil into fuel consumption, and, through over-release of the gas, diminish the amount of oil that can be ultimately obtained by flow and pumping.'

"Again on page 17 the condition favoring conservation of supply and avoidance of waste through property control [fol. 271] was discussed as follows:

" 'For a decade, the Cabin Creek field in West Virginia has been an outstanding example of an economical drilling program having a definite purpose of high recovery at low cost and at a rate adjusted to demand. The field is owned by a single company and has been operated as a unit with

the definite purpose of only meeting the requirements of the operating company's refinery and that for the longest possible time with crude oil produced at the least possible expense. This twofold aim of maximum recovery and minimum cost was sought through planning the economic spacing of wells and through conserving the gas pressure in the oil-bearing sand. Freedom from the pressure of competition has made possible at Cabin Creek a remarkable controlled production curve for the field, bearing little resemblance to the decline curve of other fields. Last year, for example, the output from Cabin Creek was the same as eight years before.'

"In its conclusion of this report, the Board urged State action in these words (p. 24):

"'State governments should promptly study the economic advantage of cooperative action by landowners and oil operators, looking toward sane development of new fields, and consider legislation authorizing cooperative agreements, under proper safeguards. And State legislation, with the declared purpose of conservation, should be enacted to stop the waste of gas, the loss of its content of gasoline, and the even greater loss incident to reduction of gas pressure in the oil sands.'

"And the Board also endorsed cooperation upon the part of the industry in these words (p. 25):

"'Cooperation within the industry can affect economies all along the line—in development and production, a better balancing of supply to demand, when and where the oil is needed; in transportation, better planning, thus avoiding crosshauls of crude and crosshauls of products; in distribution, less duplication of marketing facilities, which at times even involve an expense equal to the cost of production and refining. Large savings in both production and refining are possible through the general adoption of the best technique already used by the more progressive units.

"'Cooperation within the industry is recommended in both research and action, in discovering the best practice and in adopting it. Field cooperation between neighboring operators in preserving back pressure and reducing the gas factor is an example of practical conservation, or if it is too late to do this, field cooperation can take the form of build-

ing up pressure by artificial means. United and coordinated effort is the method recommended.'

"That in Report II (1928) the Board noted the breaking of all previous records in oil production and oil consumption, with the comment, page 1:

[fol. 272] "'Appreciation of oil conservation as a business policy has influenced the adoption of production methods which, it is hoped, promise larger ultimate recovery, but the one assured and significant fact in the production situation of today is the sharply accelerated rate of drawing upon the underground reserves.'

"That in Report III (1929) the Board commented upon the progress made in the four years since President Coolidge placed upon the Federal Oil Conservation Board 'the responsibility of promoting cooperation between the Government and the oil industry' and noted (p. 1) that:

"'The excess production commented upon by you when you created the board in December, 1924, unfortunately continues. The flow from new wells has more than offset the declining output of old wells; production has even kept ahead of increasing consumption. This excess of domestic supply over a demand which has increased 20 per cent since 1924 is shown by the stocks of crude oil at the close of business December 31, 1928, which amounted to about 485,000,000 barrels as compared with 409,000,000 barrels at the end of 1924, when you called the Nation's attention to the need of safeguarding national security through conservation of oil.'

Later in this report the larger estimate of reserves through discovery of new fields and of deeper sands are mentioned with the comment (p. 2) 'While from an economic point of view these additions to our estimates of the reserves of oil in known fields are gratifying, nevertheless they constitute an increased menace to the industry unless self-restraint continues to be exercised in the exploitation of the newly discovered sands. * * * Storage of oil underground, where nature placed it, is regarded as the best method because it is cheapest and safest,' and on page 3 'Under present conditions, divided ownership in an oil field must involve correlated rights and obligations, and only as these are recognized and lead to voluntary agreements can there

be freedom from economic waste in developing and operating the field. The possibility of unrestrained individual action in what should await regulated community action still remains a menace to the present stabilized rate of production. * * * Plainly, the essential factor in handling underground reserves of oil, admittedly the most economical form of storage, is full cooperation in unit control, whether by voluntary agreement or by State enforcement.'

"That in Report IV (1930), the Board's latest report, recently issued, contains a statistical chart which exhibits the marvelous growth of the industry from 1918 to 1929 and most notable among the items in this supply and demand table, or oil balance sheet, are the yearly additions to the quantity of crude oil and refined products in storage, which amounted to a total of 682,000,000 barrels on December 31, 1929 (p. 4); the Board again admits its need of revision of ideas regarding the supply of oil probably available, but remarks (p. 8) that such revision of estimates does not increase the actual future supply, so that the Board renews its appeal against waste in these words (p. 8):

" 'The purpose of the several conservation measures urged by the Federal Oil Conservation Board is primarily to delay the coming of the day when an impending shortage [fol. 273] of crude oil will cause a radical advance in the prices of the refinery products the public buys. It matters not whether the oil reserves of the United States are five times a billion barrels or twenty times a billion barrels, the supply is limited and cannot be increased. Even the most generous estimates place the date at which our oil reserves will be practically depleted, under present rates of consumption, in the comparatively near future. In the interests of national defense and industrial prosperity this generation should not be permitted to waste this irreplaceable natural product and thus seriously handicap future generations of Americans.'

and notes the degree of restraint already active in the industry, stating (p. 8):

" 'Never before has there been so large a shut-in production. Many well-informed men in the industry believe that if all the wells of California, Texas, and Oklahoma were opened to full capacity the present daily output, large as

it is, might be temporarily doubled. This potential production of oil wisely held in underground storage represents a quick asset that will be immediately available when needed.'

The Board noted the tendency to substitute free storage underground for costly above-ground tankage and commented (p. 2):

"'The spirit of co-operation which characterized the year, and the genuine efforts to maintain a balance between crude production and demand for refined products, through proration and curtailment agreements under auspices of State authorities, undoubtedly held underground a large amount of crude oil, and were, in this respect, helpful influences.'

"That I am convinced by the statistics of production and consumption available that the present daily demand upon the oil wells of the United States is not in excess of 2,500,000 barrels and with the seasonal decreases in gasoline demand now beginning, a considerably lower figure for crude oil demand may be expected, especially in view of the drafts upon tank stocks or crude and gasoline that might be made with the purpose of decreasing carrying charges and deterioration, costs that must be met eventually by either producer or consumer or both.

"That at present, estimates of shut-in production or potential production in excess of needs vary widely, from several million barrels a day when based on short-period tests of the larger flush pools, to the one or even three million barrel estimate referred to in the Board's report (p. 4); the difference of view is not essential, as either figure implies disaster, through a flood of unneeded oil, and it is this fear of waste of an essential resource on a large scale that has led the Federal Oil Conservation Board to maintain its activity in the study of the oil business in its obvious relations to the public interest.

"That production of oil in large excess of current needs involves waste of several types and waste to an extent that makes the problem one of country-wide concern; the waste of oil is both economic and physical, and with this there is unfortunately connected the waste of natural gas, to which the Federal Oil Conservation Board has referred in its [fol. 274] latest report as follows (p. 15):

"'Attention had been repeatedly called to the enormous waste involved in the escape of gas to the air, but since above-ground storage of natural gas is plainly impracticable from the standpoint of cost, many executives, who though in terms of oil, regarded escaping gas as unavoidable waste. Now that this natural resource, produced with the oil, has taken on a commodity value at the well as a result of long-distance pipe lines, opinions and policies have changed. Moreover, production engineers are now pointing out the even greater importance of gas as the most efficient agent in extracting oil from the ground, with the result that it is realized that the prevention of the escape of gas is highly desirable in the practical business of producing oil.'

"That in his capacity as chairman of the Federal Oil Conservation Board and especially as the officer charged with administration of the public lands, the Secretary of the Interior has delegated to me in the past eighteen months the investigation of ways and means of reducing waste in the oil and gas fields in which the Government is a landowner, this assignment having involved no less than five visits to California in the effort to seek to stop in some degree the enormous waste of natural gas in the Kettleman Hills field where the Government-owned lands under permit or lease make up approximately 30 per cent of the field, thus enabling the Secretary of the Interior to exercise some degree of control over operations.

"That, as a public official, my sole purpose in seeking to delay development and postpone production in the Kettleman Hills field has been to protect the public interest, the consummation of an agreement among the Government lessees and other operators in the summer of 1929 having kept this major field, with a potential daily output of not less than 100,000 barrels of exceptionally high-grade oil, from producing daily more than 15,000 barrels for the greater part of 1930, and this self-restraint among the Kettleman Hills operators under this agreement materially contributed to a condition of balanced production in California, and was of even greater benefit to the general public of that State in the notable reduction in the waste of natural gas, which waste even now amounts to hundreds of millions of cubic feet a day.

"That in the light of continued study and frequent contracts with operating engineers, consulting geologists, and others directly connected with the conduct of the oil business, it is my opinion that in order to prevent economic and physical waste of both oil and gas there must be some control applied to oil production, especially of flush pools, that will equitably protect each operator and owner from his neighbors, and that anything other than the same control exercised over each and every producer would not only produce inequality of present opportunity for profit but also involve future loss, injury, and impairment of ability to produce oil from the common source of supply."

[fol. 275] The affidavit of R. D. Bush, introduced on behalf of defendants-appellees, states:

"That in the State of California there is a department created by law known and designated as the Department of Natural Resources of the State of California. That within said Department of Natural Resources there is a division created by law for the supervision of petroleum and gas, in charge of a chief, known as State Oil and Gas Supervisor. That he is now and at all times hereinafter mentioned was the duly appointed, qualified and acting State Oil and Gas Supervisor of said State of California. That as such State Oil and Gas Supervisor it is, and at all the times hereinafter mentioned has been, his duty so to supervise the drilling, operation and maintenance and abandonment of petroleum or gas wells in the State of California, as to prevent, as far as possible, damage to underground petroleum and gas deposits from infiltrating water and other causes and loss of petroleum and natural gas.

"That as such State Oil and Gas Supervisor he has control of and access to the records of all oil wells drilled and/or operated within the State of California, and is familiar with the various oil fields in said State and with the lands situated within each of said fields and with the production of oil and gas from each of said fields.

"That the laws of said State of California provide that the unreasonable waste of natural gas is declared to be opposed to the public interest and is prohibited and declared to be unlawful.

"That the law provides for the supervision of the drilling operation, maintenance and abandonment of petroleum or gas wells in said State so as to prevent damage to underground petroleum and gas deposits from infiltrating water and other causes and loss of petroleum and natural gas, but does not provide any regulations as to the quantity of oil which may be produced.

"That under and pursuant to the above mentioned law prohibiting the waste of natural gas, actions have been commenced by the State of California against the operators in certain oil fields within said State to prevent the waste of natural gas within said fields. Except for such curtailment of oil production as naturally results from the reduction in the production of natural gas, all measures adopted and in force within the State of California for the proration of said production among the producers has been voluntary on the part of said producers. That affiant is familiar with the steps taken by said producers. That affiant is familiar with the steps taken by said producers for said purpose, which steps have been and are as hereinafter set forth.

"That during the month of January, 1929, at a meeting of the oil operators of the State of California called for that purpose a General Committee of eighteen was appointed by said operators to regulate the production of oil in the State of California; that the various fields in said State were divided into groups and an Umpire appointed for each group, the duties of said Umpire being to enforce the proration orders issued by said Committee.

[fol. 276] "That on the 1st day of November, 1929, the daily production of crude oil in the State of California was approximately one million (1,000,000) barrels. That on said date the first curtailment agreement in said State became effective and the allowable production for the State was reduced to six hundred fifty thousands (650,000) barrels per day. That from said date to the present, curtailment has been in effect in said State and the allowable production has from time to time been reduced. That during the past few months the allowable production has been fixed at five hundred ninety-six thousand (596,000) barrels per day.

"That on the sixteenth day of September, 1930, said General Committee at a regularly called meeting, found the

potential production of the State of California to be one million one hundred eighty-six thousand six hundred (1,186,600) barrels of crude oil per day, and fixed the allowable production for the State of California at not more than five hundred fifty thousand (550,000) barrels per day, but because there was certain production within the State on which curtailment could not be secured, said Committee fixed the daily allowable production for the fields and producers subject to curtailment at five hundred forty thousand (540,000) barrels per day, the additional ten thousand (10,000) barrels being designed to take care of the production on which curtailment could not be secured. That affiant has seen the copy of the resolution adopted by said Committee on said date, and that it is provided therein that each operator shall absorb any new well excess in advance of the completion of such well, and in case the excess shall be greater than such operator's estimated excess, such greater amount shall be absorbed under the direction of the Umpire within ten (10) days for any new well brought in within fifteen (15) days from the date of said resolution, and thereafter within five (5) days after such new well is completed.

"That said order by its terms was to become effective on the 17th day of September, 1930, and continue in effect until January 1, 1931, subject to change by said Committee.

"Attached hereto, marked Exhibit "A" and by reference made a part hereof, is a list published by said Committee which shows the principal producing fields of this State with the potential production of each, the percentage of curtailment ordered for each field, the allowable production for each field until January 1, 1931, and the actual daily production for each field during the period September 1st to September 15, 1930, both inclusive. Affiant is familiar with the actual and potential production of the various fields and properties in said State, and to the best of his knowledge and belief states that the figures set forth in said Exhibit "A" are approximately correct and that the actual production of oil in said State is approximately correct and that the actual production of oil in said State is approximately the quantity fixed as the allowable production under the orders of said Committee.

"Affiant further states that practically all of the operators and producers of crude petroleum in the State of California are voluntarily co-operating in the proration and curtailment of crude oil. A few of the operators and producers in said State have refused and do still refuse to co-operate in said movement, but they are few in number and the quantity of oil produced by them comprises only a small percentage of the actual and/or potential production [fol. 277] of the State and the overproduction of said operators has been absorbed by extra curtailment of those participating in said movement.

"That it is the opinion of affiant that the proration of production of oil, sometimes referred to as conservation and sometimes as curtailment, is of great importance, not only to the producers, but to the State of California, the United States and the people thereof. That to produce the desired results proration must be generally effective throughout the United States; that affiant believes that said policy of proration if made generally effective throughout the United States will balance the supply of and demand for crude petroleum, stabilize markets for petroleum products, prevent waste of one of our most valuable natural resources and result in immediate and future benefits to the industry itself and to the people at large.

"Further affiant sayeth not.

California Proration Schedule, September 16-30, 1930

	Sept. 16-30 Potential B/D	% Cut	Fixed Allotment B/D	Production Sept. 1-15 B/D
Belridge	2,425	29.90	1,700	1,901
Brea-Olinda	22,450	51.00	11,000	11,685
Capitan	1,025	98.05	20	15
Coalinga	34,100	73.61	9,000	8,826
Dominguez	15,220	37.58	9,500	9,995
East Coyote	3,595	55.49	1,600	1,525
Elk Hills	29,820	42.99	17,000	18,158
Elwood	111,855	68.71	35,000	39,573
Fruitvale	8,605	69.32	2,640	2,553
Huntington Beach	44,170	36.61	28,000	27,910
Inglewood	22,585	29.16	16,000	17,609
Kern Front	21,885	56.59	9,500	10,110
Kern River	12,000	77.50	2,700	2,523
Kettleman Hills	90,000	83.33	15,000	18,618
Lawndale	250	10.00	225	238
L. A. & Salt Lake	1,450	3.45	1,400	1,505
Long Beach	198,470	52.13	95,000	102,370
Lost Hills	6,500	95.00	325	315
Maricopa Flat	17,265	53.66	8,000	8,710

	Sept. 16-30 Potential B/D	% Cut	Fixed Allotment B/D	Production Sept. 1-15 B/D
McKittrick	4,470	19.46	3,600	4,103
Midway-Sunset	90,310	44.64	50,000	53,787
Montebello	9,105	20.92	7,200	7,481
Mount Poso	23,785	62.16	9,000	9,610
Newport	30	.....	30	30
Playa Del Rey	23,450	.....	.....	21,825
Potrero	2,510	.40	2,500	2,433
Richfield	15,200	40.79	9,000	9,430
Rincon	2,700	.....	2,700	2,682
Rosecrans	6,655	17.36	5,500	6,655
Round Mountain	10,795	62.95	4,000	4,025
Santa Fe Springs	184,710	51.27	90,000	106,321
Santa Maria	10,500	71.43	3,000	3,585
[fol. 278]				
Seal Beach	35,425	49.19	18,000	18,150
Summerland	310	3.23	300	359
Torrance	11,825	15.43	10,000	11,825
Ventura Avenue	92,065	49.49	46,500	46,657
Ventura-Newhall	5,800	22.41	4,500	4,714
Watsonville	60	.....	60	63
West Coyote	11,175	23.94	8,500	9,516
Wheeler Ridge	600	.....	600	592
Whittier	1,450	3.45	1,400	1,408
	1,186,600	54.49	540,000	609,390

"Notes.—

"1. No provision has been made for an unobtainable curtailment of 7,000 B-D at Santa Fe Springs nor for the present excess of 10,000 B-D at Kettleman Hills.

"2. No definite allotment has been given Playa del Rey because there is at present no recognized market or price quotation for the oil.

"3. No provision is made in this schedule for production from possible new fields such as Santa Barbara, Pitas Point, Terra Bella, Weed Patch or Hermosa Beach."

[fol. 279] The affidavit of R. D. Parker, introduced on behalf of defendants-appellees, states:

"That he is Chief Supervisor of the Oil and Gas Division of the Railroad Commission of Texas, and has held such position for a number of years. That the Railroad Commission of Texas is, under the laws of the State of Texas, charged with the duty of enforcing the oil and gas conservation laws of the State and of making rules and regulations under such laws for more effectively carrying out and enforcing same. That under the laws of the State of Texas the duties, in part, of the Chief Supervisor are to gather information and to assist the Commission in the enforce-

ment of the provisions of the oil and gas laws of the State of Texas and all rules, regulations, and orders of said Commission made thereunder.

"That the Railroad Commission of Texas, having been informed by members of the oil and gas industry that a condition of serious over-supply of oil existed in this State, and that waste of oil and gas was taking place, suggested to the Texas Division of the Mid-Continent Oil & Gas Association and to the Independent Petroleum Association and to the industry the appointment of a committee to study conditions, report facts, and make recommendations to the Commission of ways and means of effecting a balance between supply and demand of petroleum in this State and of preventing further waste of oil and gas. That thereafter a committee composed of six representatives was appointed—two representatives from the Texas Division of the Mid-Continent Oil & Gas Association, two representatives from the Independent Petroleum Association, and two representatives from purchasing companies. That this committee employed a technical advisor and submitted a report to the Commission calling attention to serious overproduction, and after calling in additional representatives from the industry, submitted to the Commission, at a public hearing held in the City of Austin, Texas, on July 30, 1930, after due notice to all interested parties, a full report with recommendations, a copy of which is hereto attached as Exhibit A and made a part hereof. That at said hearing on July 30, 1930, said report of the committee was heard and other evidence presented to the Commission, and on August 9, 1930, a further hearing was held after notice, following which on August 14, 1930, the Railroad Commission of Texas issued a tentative order for conservation and prevention of waste of crude petroleum and natural gas in the various fields of the State of Texas and the prevention of discrimination by common purchasers in the purchasing of oil therefrom, a copy of which is hereto attached as Exhibit B and made a part hereof. That in said order of August 14, 1930, attached hereto as Exhibit B, notice was given of a further hearing to be held on the 25th day of August, 1930, to determine the reasonableness of said tentative order of August 14, 1930, and to consider specific orders for individual fields and dis-

tricts for carrying into effect the purposes of the tentative order of August 14, 1930. That a hearing was held on August 25, 1930, pursuant to said notice, at which testimony was heard, committee reports received, and argument fully presented by representatives of producers and purchasers of oil in this State. That thereafter on the 26th day of August, 1930, the Railroad Commission of Texas entered a supplementary order modifying and supplementing said order of August 14, 1930, a copy of which is hereto attached as Exhibit C and made a part hereof. That at said hearing on August 25, 1930, and at subsequent hearing on August [fol. 280] 26, 1930, both held after due notice to all interested parties, testimony was heard and argument presented upon the advisability of the entry of an order for the protection of small marginal wells as a conservation measure. That at the conclusion of said hearing the Railroad Commission entered an order on August 26, 1930, adopting a permanent rule defining marginal wells and exempting such wells from curtailment in the purchase of oil within the State of Texas by any common purchaser electing to purchase oil in smaller quantities than the amount tendered for purchase, a copy of which order is hereto attached as Exhibit D. and made a part hereof.

"That, as will be seen from Exhibit B hereto attached, the Railroad Commission of Texas, in its tentative order of August 14, 1930, limited the production of oil in the State of Texas for the effective period of the order to 750,000 barrels per day, in order to bring said production in balance with the maximum market available for oil in Texas, in accordance with the reports and testimony submitted to it. That on account of special conditions existing in the Gulf Coast fields of Texas, such tentative order of August 14, 1930, was modified by the final order of August 26, 1930, a copy of which is hereto attached as Exhibit C, under the terms of which the limitation of production in the Gulf Coast fields to 150,500 barrels per day, which was necessary to curtail the statewide production to 750,000 barrels per day, was not made effective until thirty days after the effective date of the order, to-wit, August 27, 1930, in order to enable the producers in the Gulf Coast fields of Texas so to limit the production from their properties as to bring the supply in balance with demand. That special consideration

was given to differences in producing conditions in different areas and to the market demand for oil produced in different areas. For example, old settled production in certain fields such as the Laredo field and the fault line fields of East Central Texas, including the Mexia, Powel, Richland, Currie, and Nigger Creek fields, were permitted to produce to full capacity. That in flush fields a greater measure of curtailment was applied, varying in accordance with peculiar conditions existing in specific fields. For example, the Yates field in Pecos County, Texas, showing a potential of 5,500,812 barrels per day according to the umpire's report filed with the Commission, was limited to a daily production of 103,000 barrels of oil, or 2 per cent of the potential; the Panhandle area, with a potential of 120,168 barrels per day as shown by the umpire's report on file, was limited to 80,000 barrels per day; the Crane-Upton field, with a potential of 47,920 barrels per day, was limited to 31,000 barrels per day; the Howard-Glasscock field, with a potential of 62,000 barrels per day, was limited to 22,700 barrels per day; the Van field in Van Zandt County, with a potential according to testimony presented at the hearing of approximately 1,000,000 barrels per day, was limited to 27,500 barrels per day; the Darst Creek field, with a potential of 156,822 barrels per day according to the umpire's report, was limited to 42,300 barrels per day; the Salt Flat field, with a potential of 20,595 barrels per day according to the umpire's report, was limited to 16,500 barrels per day; the Ector County field, with a potential of 43,640 barrels per day, was limited to 12,000 barrels per day. That from the above it will appear that the curtailment varied from an allowable 2 per cent of the potential in the Yates field to the total potential in other fields, all depending upon the special circumstances existing in the particular field involved. That according to the reports and testimony presented to the Commission the total potential production of the State was something in excess of 7,000,000 barrels per day.

[fol. 281] "Further affiant sayeth not."

EXHIBIT "A"

To the Honorable Railroad Commission of the State of Texas:

"In view of the general situation which exists in the oil business in the State of Texas, which condition has existed for some period of time, and has become more aggravated by recent events; and at the request of your Honorable body, representatives from the oil industry all over the state have endeavored to arrive at what the fundamental causes of the present situation are. These causes, as they appear to these representatives, are contained in the report hereinafter set out, which is herewith submitted to your Honorable body; and in further compliance with your request, the report hereinafter contained suggests certain remedies which appear to these representatives to be necessary to alleviate the conditions as they exist.

"In order that the report and the recommendations hereinafter contained may be more intelligible we undertake to outline the situation as it exists:

"That production of petroleum throughout the world has been for some period of time greatly in excess of the world's market demands. Petroleum is one of the great natural resources of the State of Texas. The production of petroleum within the State has been for a long period in excess of the ready market demand available to producers in Texas. The framers of the Constitution of Texas provided in that instrument that the Legislature of this state should pass such laws as might be necessary to provide for the orderly development and conservation of the natural resources of this state and belonging to its citizens in common. In obedience to this mandate in the Constitution, the Legislature of Texas has from time to time passed various laws, the most recent of which is commonly referred to as the Pipeline Law. This Pipeline Law was designed to fill the gaps left in previous legislation on this same subject, and was primarily designed for the purpose of preventing discrimination in the transportation, in the storage, and in the marketing of crude oil within this state.

"Your Honorable body, by all of these legislative acts, has been charged with the duty and responsibility of ad-

ministering the laws with respect to the orderly development and conservation of oil and gas. Your Honorable body, by virtue of all of these legislative enactments, is empowered to make, promulgate, and enforce such reasonable rules and regulations as may be necessary to properly provide for this orderly production and conservation.

"The surplus production of petroleum over demand can not be directly attributable to any given section or to any particular group within the state. Development of geophysical devices and new and improved drilling machinery enabling vastly deeper drilling than ever before has hastened the transformation of the business of producing oil from a gambling basis to a scientific basis. New, prolific pools have been discovered and developed by this new, [fol. 282] scientific method years in advance of their probable discovery by old methods. Improvements in methods of refining have enlarged the capacity of a barrel of petroleum to supply the demands of consumers. Therefore, if the future citizens of Texas are to have their share in the enjoyment of petroleum deposits as part of the natural resources of the state in whic hthey will live, it is incumbent upon your Honorable body to exercise the powers vested in it through the Legislature by the Constitution to take care of these future generations to come, and to prevent the actual waste throught reckless and profligate production of this great natural resource.

"The Legislature has directed that persons who are by law defined as common purchasers shall in purchasing petroleum in this state refrain from discriminating between producers in the same field, and refrain from unjust or unreasonable discrimination between different fields within this state, and has delegated to your body the duty of determining the reasonableness of any discrimination between various fields, taking into account the size, age, depth of wells, and all other factors.

"Some fields within this state have been producing for many years, and the production from these old wells is in such condition that to enforce proration against these wells would from a practical standpoint operate to destroy them. Other wells are producing such a quantity of water along with the oil that to curtail the operation of such wells would permit water encroachment to such an extent as to destroy

the wells, and, thereby, in each instance, forever destroy the amount of oil ultimately recoverable through such wells. To destroy the amount of oil ultimately recoverable through any well now in operation is an actual waste. Many wells within this state are being operated solely with the view to producing oil therefrom, and the gas which is being produced along with the oil is being permitted to escape and to be actually wasted because to conserve the gas thus being produced would result in a diminution of the oil being produced. Many wells are now being drilled with no hope but that the oil so produced will either be stored at a resulting waste, or become an additional burden to an already overcrowded market.

"With this general situation in mind, the following concrete suggestions are made with the idea that your Honorable body (which is a fact-finding body as well), after determining the facts as they exist, will enter an order embodying such concrete rules and regulations as to your Honors may seem best suited to remedy the present wasteful situation.

"We suggest that adequate rules and regulations be contained in the order to accomplish the following general outline of results:

"1. That a statewide curtainment of the amount of oil which may be produced within this state be effected for a period of ninety (90) days beginning August 1, 1930.

"2. That the basis of such curtailment be defined specifically as to each field within this state, taking into consideration the various facts and circumstances within each separate field.

"3. Since at your request a careful detailed survey of the present situation has been made, and from such survey it is indicated that a reduction of 75,000 barrels in daily production is now needed to meet the situation as it now [fol. 283] exists; and since in the opinion of the Producers' Committees, which have been working on this survey it is advisable to obtain not only the reduction necessary to balance demand, but an additional reduction of at least 50,000 barrels, bringing a total curtailment of approximately 125,000 barrels below the daily average Texas production at the

end of June, we recommend that the specific daily production from each field or district be reduced and limited during such ninety-day period to the following specific amounts:

Filed	Present production as of July 19,1930, barrels.	Daily permitted production during proration period, barrels
Panhandle (including Gray, Hutchinson, Moore, Carson, Potter and Wheeler counties) (July 24, 1930)	96,450	80,000
North Central Texas (including Archer, Baylor, Clay, Cooke, Foard, Montague, Wichita and Wilbarger counties)	74,450	69,000
West Central Texas (including Brown, Callahan, Coleman, Eastland, Jack, Palo Pinto, Shackelford, Stephens, Throckmorton, Young, Haskell and Runnells counties)	55,700	52,000
West Texas (including Crane, Crockett, Ector, Howard, Glasscock, Jones, Mitchell, Scurry, Reagan, Winkler, Pecos, Ward, Jones and Fisher counties)	293,950	276,350

"In this district, since most of the fields are already either under proration, or are badly subject to water encroachment, we recommend that the production of Upton and Crane counties, now totaling approximately 33,000 barrels per day be reduced 33⅓ per cent, or 11,000 barrels; and that the Big Lake field in Reagan County, now producing 11,000 barrels, from an upper or sulphur pay, and 9,000 barrels from an 8500-foot pay, be reduced by 33⅓ per cent each, or 6,600 barrels. In connection with the deep pay mentioned in this field, it should be pointed out that there is an actual waste of valuable gas far out of proportion to the oil being produced, amounting to 10,000 cubic feet per barrel, whereas in most fields of West Texas the oil is being flowed with from 300 to 500 cubic feet per barrel.

Filed	Present production as of July 19, 1930, barrels	Daily permitted production during proration period, barrels
East Texas (including Anderson, Cherokee, Navarro, Freestone, Limestone and Van Zandt)	39,350	39,350

[fol. 284] "We recommend that no reductions be attempted in the old fault-line fields, including Mexic, Powell, Richland, Currie, and Nigger Creek, for the reason that these wells are already producing such amounts of water that they can not be curtailed without resulting in waste.

Van Field (Van Zandt County)

"This field, although less than a year old, has demonstrated that it has an immense potential. It is being operated at present under the unit plan, and production is being held to 25,000 barrels per day, although its potential is many times that amount. In connection with this field it should be borne in mind that there are certain wells now drilling outside of the unit which may prove up additional areas; and if so, the entire area should be included under proration, not to allow more than 25,000 barrels per day of total takings from the field during this proration period.

Filed	Present production as of July 19, 1930, barrels	Daily permitted production during proration period. barrels
Southwest Texas (including Bexar, Caldwell, Atascosa, Guadalupe, Bastrop, Williamson, Milam, Live Oak, McMullen, Webb, Duvall, Jim Hogg and Zapata counties)	72,400	66,150

"In the Southwest Texas District, we call special attention, first to the Darst Creek pool in Guadalupe County, where proration has been in effect within the last few days, with a total production under proration of 26,500 barrels. This proration has been upset by certain injunction suits

against the Railroad Commission, and we wish to urge that your Honorable body use all force at its disposal, and obtain the full co-operation of the Attorney General's Department to support proration and to dissolve the recently granted temporary injunction. When such has been accomplished, we urgently recommend that the Darst Creek proration again be put into effect at the former maximum of 26,500 barrels per day.

"In the Salt Flat field, in Caldwell County, we recommend that the present production of 20,900 barrels be reduced to 15,675 barrels.

"In the Laredo District, including the new Escopas field, in Zapata County, we recommend that the settled production be curtailed ten per cent; and that the Escopas field be curtailed fifty per cent now, and an additional percentage later, if necessary. This district now has 11,700 barrels, and should be reduced to a maximum of 10,000 barrels.

"In the new Chapman field, in Williamson County, there is a present potential production variously estimated as high as 22,000 barrels, with a pipeline outlet of 7,000 barrels. We recommend that the production be held strictly to this present pipeline outlet, or 7,000 barrels; and we wish to call attention here to the very serious situation which has arisen from the disorderly and wasteful marketing of this oil, a condition which is due alike to the actions of certain purchasing companies and of the producers in the field.

Filed	Present production as of July 19, 1930, barrels	Daily permitted production during proration period, barrels
Gulf Coast District (including Orange, Jefferson, Hardin, Liberty, Chambers, Galveston, Harris, Washington, Austin, Fort Bend, [fol. 285] Brazoria, Wharton, Matagorda, Refugio, Kleberg and Bee counties	183,500	150,500

"In this district the Refugio field is now producing 36,000 barrels per day from 105 wells. We recommend a curtailment of 33⅓ per cent to 24,000 barrels total, unless fur-

ther investigation by your Honorable Commission shall show that such a cut would endanger the life of these wells, with the resulting waste. This is a semi-flush field and it is certainly not fair to ask the producers of North and West Texas to bear the h-avey load of proration, without some of the fields along the Gulf Coast sharing therein.

"The new Pettus field in Bee County is another danger spot. We recommend that everything possible be done to discourage drilling of new and unnecessary wells in this field, and that the production be rigidly restricted to the present 6,200 barrels per day. One well has just been completed, estimated good to 2,000 barrels per day, in this field, and if more wells of similar size are encountered and the field will undoubtedly require a carefully worked out proration plan to handle the situation.

"There are several other fields in the Gulf Coast District, which can undoubtedly stand some curtailment. The production of the other fields, excluding the Pettus and Refugio totals 141,000 barrels. For those fields we recommend that the production be curtailed by at least 15 per cent, or 21,000 barrels per day, distributing such cuts where same may be best applied in the judgment of your Honorable Commission, or the committees working in those fields. In this case again, curtailment measures should be applied to flush or semi-flush wells, without curtailing pumping wells, which are producing such quantities of water as to endanger their continued existence with resulting waste of this natural resource.

"Reference is here made to the report of David Donoghue, Technical Advisor of the Joint Committee of the Independent Petroleum Association, the Mid-Continent Oil and Gas Association, and the purchasing companies, which has already been filed with the Honorable R. D. Parker, Chief Supervisor of the Oil and Gas Division of your Honorable Commission. In this report there is contained a comprehensive survey of conditions in Texas, as of June 28, 1930, showing Texas production as of that date totaling 863,000 barrels per day, with a visible pipeline outlet of approximately 76,000 barrels less, or 786,400 barrels total. Mr. Donoghue's report sets out in a condensed form the results of the investigation which was conducted in line with your request, and on the facts disclosed by said report the foregoing suggestions are based.

"4. Should any new pool be brought in during this proration period, or any extension thereof, as the result of drilling in progress at the effective date of the Commission's order, or as the result of drilling done pursuant to a contract in existence as of such effective date, then the production from such new pool shall be limited to such an amount as the Commission upon hearing shall then determine.

"5. That new wells in old pools drilled after the effective date of your order be divided into two classes:

"(a) Wells, the drilling of which was made necessary to [fol. 286] protect the lease premises on which same were drilled from offset drainage and/or forfeiture.

"(b) All other new wells in old pools.

'That the production from Class (a) new wells be run in which the production from the lease on which same are respectively situated, and be figured in arriving at the then average daily production per well per lease; that the production from Class (b) new wells be shut in and not produced during the proration period, or any extension thereof, except in such manner as the Commission may after proper hearing allow.

"6. That the order issued by your Commission specify as to each district the character of wells which shall be prorated, in order to accomplish the reduction hereinbefore recommended for that particular area, bearing in mind that in all cases the small or marginal well, or the well producing large quantities of water, shall be protected, and that no attempt shall be made to curtail any well in such a manner as to result in its abandonment, and consequent actual waste of petroleum.

"7. That such proration order be not construed as relieving all persons from a strict compliance with all statutory laws governing the production, transportation, storage and purchase of oil.

"Upon the hearing before your Honorable body representatives from the various fields, pools, and districts will present the pertinent facts to assist you in the framing of your specific order as same applies to such particular field,

pool or district. We recommend that in the enforcement of your orders, as they apply to each separate field, pool, or district, such local committees and/or supervisors be utilized and granted such powers and authority as by your order you may designate.

"The foregoing report and suggestions are respectfully submitted as a compliance with your request, and in as much detail as we feel is possible in this short period, and we hereby pledge our full co-operation for any future service you may call upon us to render in this connection.

"Respectfully submitted at Austin, Texas, this 30th day of July, 1930, by the undersigned.

(Signed) Robert R. Penn, Chairman. John E. Kilgore, Wichita Falls. M. S. Church, Dallas. Chas. P. McGaha, Wichita Falls. C. W. Kennon, Jr., Mexia. W. K. Campbell, Wichita Falls. J. S. Bridwell, Wichita Falls. Ed. Peterson, Wichita Falls. J. A. McCarty, Wichita Falls. T. O. Shappell, Wichita Falls. J. C. Reynolds, Wichita Falls. John F. O'Donohoe, Wichita Falls. E. H. Eddleman, Wichita Falls. John F. Mouser, Eastland. J. H. Clark, Amarillo. H. J. Struth, Houston. W. N. Finnegan, Jr., Houston. R. M. Underwood, [fol. 287] Wichita Falls. R. C. Stanford, Wichita Falls L. H. Simpson, Mexia. W. L. Todd, Dallas. Warner Clark, Dallas. M. W. Blair, Wichita Falls. P. B. Flynn, Wichita Falls. Harvey Harris, Wichita Falls. O. O. Franklin, Vernon. P. C. Murphy, Houston. L. H. Cullum, Wichita Falls. W. D. Gully, Brownwood. H. P. Evans, Brownwood. David Donoghue, Ft. Worth.

"I, C. F. Petet, Secretary of the Railroad Commission of Texas, do hereby certify that the foregoing is a true copy of a report of a committee composed of R. R. Penn and others representing the Texas division of the Mid-Continent Oil and Gas Association, the Independent Petroleum Association, the purchasing companies operating in the State of Texas, and various producers of oil in said State, said report being the same which was submitted to the Commission at a public hearing held in the City of Austin July 30, 1930, and calling attention to over-production and waste of crude oil in said State.

"Witness my hand and the seal of the Railroad Commission of Texas on this the 23rd day of September, A. D. 1930.

C. F. Petet, Secretary of the Railroad Commission of Texas." (Seal.)

EXHIBIT "B"

"Railroad Commission of Texas, Oil and Gas Division

"Oil and Gas Docket No. 112

"In re Conservation and Prevention of Waste of Crude Petroleum and Natural Gas in the Various Fields in the State of Texas and the Prevention of Discrimination by Common Purchasers in the Purchase of Oil Therefrom

"Austin, Texas, August 14, 1930.

"Pursuant to due notice in the above cause given upon application of a joint committee of the Independent Petroleum Association, The Texas Division of the Mid-Continent Oil and Gas Association, and the purchasers of crude oil in the State of Texas and pursuant to the conservation laws of the State of Texas, as contained in Title No. 102, Revised Statutes of 1925, and amendments thereto, hearings were begun on July 30, 1930, and concluded on August 9, 1930, for the purpose, among other things, of inquiring into the present status of the production of crude oil or petroleum in the State of Texas, and as to conditions existing in the handling and marketing of the production thereof in the various oil fields in the State of Texas with a view of issuing such orders as might be necessary to avoid waste and promote the conservation of the natural resources in said State. At such hearings, representatives of the various persons, firms and corporations in the State of Texas, en- [fol. 288] gaged in the several branches of the oil industry in this State, including the production thereof, appeared, in response to notices, and evidence was introduced and arguments presented in the premises.

"Authority to deal with the subject of the conservation of the natural resources of the State of Texas is derived from the Constitution of Texas as amended Aug. 31, 1917,

wherein it is made incumbent upon the legislature to pass laws appropriate to the conservation and development of the natural resources of the State. In obedience to this mandate there was enacted in 1919 an oil and gas conservation act which was codified in 1925 under Title 102, Revised Civil Statutes of Texas. By this Act, the legislature has forbidden comprehensively the production of crude oil or petroleum 'in such manner and under such conditions as to constitute waste' and the duty is placed upon the Railroad Commission of Texas to 'do all things necessary for the conservation of oil' and to 'establish such rules and regulations as will be necessary to conserve the oil and gas resources in the State.' This Commission was made the agency of the legislature to control for it the production, storage, carriage and purchasing of crude oil for the primary purpose of protecting a natural resource in which there is a measure of ownership common to all our people. Several phases of the conservation act just referred to have been before the courts of this State in cases where the power of this Commission to enforce regulations for the conservation of crude oil and natural gas has been sustained.

"There is not included within the authority vested in this Commission, under the acts referred to, the power to adjust the supply of petroleum to the demand of the market, therefore merely to bring about an increased price of the commodity. While as citizens the Commission may have a keen interest in the economic welfare of the large group of citizens, whose capital is devoted to the production of oil, it cannot be the guardian of their pecuniary interests. The functions assumed by our State Government cannot include that of an economic dictator. It is apparent, therefore, that this Commission cannot limit the production of crude oil in this State through any proration order upon any other basis than proper consideration involving the interests of all the people of our State.

"If there be within this State production of petroleum in excess of demand, and this excess production results in actual waste of the natural resources of the State, this Commission has the power, and it is its duty, to make such rules and regulations as may be necessary to insure the conservation of the resources so being wasted.

"From the facts presented to us at the hearing of this cause we shall find that such conditions exist as demand that action be taken within the authority and duty of the Commission to act in the premises. These facts are:

"1. That the world is now producing much more petroleum than necessary to meet the demand and there is now in storage on top of the ground enormous quantities of petroleum. The amount of oil being produced in the world is daily adding to the accumulation of storage oil because of the excess of production over demand.

"2. Generally speaking, outside of Texas the oil industry [fol. 289] and regulatory bodies have taken steps toward the conservation of oil in its natural reservoirs. In the principal oil producing states of this country, oil wells and oil fields have been prorated through cooperation on the part of the industry or through the mandates of governmental units, so that the supply of oil taken from the earth may be adjusted to the demand for consumption, and thereby waste eliminated. The existing and threatened overproduction in Texas is the chief menace to the balancing of supply and demand, and the principal threat that our natural resource will be wasted through continued storage in its crude state.

"3. That the unrestricted production of petroleum within the State of Texas is causing waste, in that when petroleum is removed from the strata in which it is found into artificial storage the action of the evaporation, heat, etc., causes such petroleum to lose its lighter volatile elements and no method has yet been devised to prevent its constant evaporation, shrinkage and deterioration when held in storage for any length of time.

"These lighter volatile elements escape never to be retained so that when quantities are being run to storage, the amount of resulting waste is enormous. Waste is also being occasioned by reason of the fact that the major purchasing companies of Texas seeking to avoid discrimination between the producers of oil from whom they purchase and by reason of the world overproduction above adverted to, are curtailing their purchases in varying amounts, in some instances purchasing only forty per cent of the oil actually produced and in some instances purchasing only

five per cent of the oil which could be produced. There are thousands of marginal wells in Texas, some of them old and producing only small quantities of oil daily. There are thousands of wells in Texas producing quantities of water along with oil. By reason of such curtailed purchases, the operators of these marginal wells and wells producing quantities of salt water are forced to limit the daily operations of such wells. Most of such wells will thereby be destroyed and all of them by such treatment will be impaired in their ability thereafter to produce oil in such quantities as they would have produced but for such limited operations. Thereby the amount of oil ultimately recoverable through such wells will be decreased to such an extent as to amount to a material waste. Moreover, the taking of a greater proportion of oil from one lease than from a contiguous lease brings about a reduction in the gas pressure on the latter lease, and to that extent reduces the quantity of oil recoverable therefrom. The oil not recoverable is wasted to the people just as though it evaporated into thin air. Thus we find that under conditions now existing and that will likely continue during the period of ninety days from the effective date of the rules herein adopted, it would be injurious to the oil and gas bearing sands in this State, and would result in reducing the amount of oil ultimately recoverable therefrom, for oil to be produced in this State in excess of 750,000 barrels per day.

"4. That the running of vast quantities of oil into storage, and its retention there for an indefinite period of time, is now creating in all of the fields of Texas an additional and unnecessary fire hazard in each field.

"5. That a public necessity exists for the intervention of this Commission to make and enforce equitable proration [fol. 290] in the amount of oil that may be produced within this State in such manner as to prevent existing and potential waste.

"6. That for a period of ninety days, beginning the 27th day of August, 1930, at 7 o'clock A. M., not more than 750,000 barrels daily should be produced in Texas, for the reason that such amount is the maximum market available to oil producers in Texas, and any other oil produced in Texas in excess of that amount would cause waste.

"7. That to effect this proposed order so limiting the amount of oil which may be produced, and prorating the amount among the various fields of this State, is necessary.

"It is therefore ordered by the Railroad Commission of Texas that notice is hereby given that at 10 o'clock A. M., on the 25th day of August, 1930, at the hearing room of the Railroad Commission of Texas, in Austin, Texas, a hearing will be held to determine the reasonableness of the following order so prorating such production among the various fields of this State, and except as upon such hearing the same may be modified, the following order shall become effective as of 7 o'clock A. M., the 27th day of August, 1930.

"(1) For a period of ninety days, beginning the 27th day of August, 1930, at 7 o'clock A. M., unless and only to the extent modified by subsequent orders of this Commission, no more than 750,000 barrels of oil per day shall be produced within the State of Texas.

"(2) During such ninety day period the daily production of oil from the various fields in this State shall be limited to the following specified amounts:

"Panhandle (Including Gray, Hutchinson, Moore, Potter, Carson and Wheeler Counties): 80,000 barrels.

"North Central Texas (Including Archer, Baylor, Clay, Cooke, Foard, Montague, Wichita and Wilbarger Counties): 69,000 barrels.

"West Central Texas (Including Brown, Callahan, Comanche, Coleman, Eastland, Erath, Jack, Palo Pinta, Shackelford, Stephens, Throckmorton, Young, Haskell and Runnells Counties): 52,000 barrels.

"West Texas (Including Crane, Upton, Crockett, Ector, Howard, Glasscock, Jones, Mitchell, Scurry, Winkler, Pecos, Reagon, Ward, Jones, Fisher Counties)**: 276,350 barrels.

**(The amount allotted to this district is tentatively placed at 276,350 barrels daily pending final determination of the exact amount to be allotted to same as a result of determination to be reached after hearing testimony and objection, if any, at a hearing herein scheduled to be held on the 25th day of August, 1930.)

"East Texas (Including Anderson, Cherokee, Navarro, Freestone, Limestone and Van Zandt Counties): 41,850 barrels.

"Southwest Texas (Including Bexar, Caldwell, Atascosa, Guadalupe, Bastrop, Williamson, Milam, Medina, Live Oak, McMullen, Webb, Duvall, Jim Hogg and Zapata Coun-
[fol. 291] ties)**: 67,150 barrels.

**(The amount allotted to this district is tentatively placed at 67,150 barrels daily pending final determination of the exact amount to be allotted to same as a result of determination to be reached after hearing testimony and objection, if any, at a hearing herein scheduled to be held on the 25th day of August, 1930.)

"Gulf Coast Districts (Including Orange, Jefferson, Hardin, Liberty, Chambers, Galveston, Harris, Washington, Austin, Fort Bend, Brazoria, Wharton, Matagorda, Refugio, Kleburg, and Bee Counties)**: 150,500 barrels.

**(The amount allotted to this district is tentatively placed at 150,500 barrels daily pending final determination of the exact amount to be allotted to same as a result of determination to be reached after hearing testimony and objection if any, at a hearing scheduled to be held on the 25th day of August, 1930.)

"The producers of oil in each field in each of the districts as above defined shall, at the hearing on the 25th day of August, 1930, present to this Commission in detail such evidence as may be proper for this Commission then to determine the proper proportion of allowable production to be prorated to each field in each district, so as to limit the total production from each district to the amounts above specified; and such producers shall submit suggested forms of special orders for such fields designed to carry out the purposes of this general order which special orders shall be considered by the Commission at such hearing and adopted or modified as the Commission may determine, or if none be submitted, then the Commission will adopt special orders therefor. Special orders for particular fields heretofore adopted by the Commission shall remain in effect except as they may be modified at or after such hearing.

"(3) Any producers of oil, or any group of such producers, in this State who feel aggrieved by this order or any subsequent order issued pursuant hereto shall have the right, upon application and notice, to a hearing before this

Commission upon such matter of grievance. Only such persons as may be directly affected by a ruling on the matter complained of shall be deemed parties at interest and entitled to notice. At such hearing this Commission will enter such orders and such modifications of orders as it then may deem proper.

"(4) The producers of oil in each field in this district may select from their number a committee. The producers of oil in each district in this State may likewise select a committee of not less than three nor more than five. It shall be the duty of such committees, if selected, to aid and work in cooperation with the Railroad Commission, and its Agents, in carrying out the details of the administration of this and subsequent orders, and to suggest and work out any proposed modification of the same, if it should develop that any unreasonable hardship or discrimination is being accomplished hereunder. Within the limits and in accordance with the terms of this order, and with the assistance of such committees and its agents, this Commission will fix the amount of oil which may be produced from each property in this State during this proration period, or any extension thereof. It is hereby expressly provided that [fol. 292] the final determination or disposition of all matters covered by this order is reserved to the Commission.

"(5) On a day in the month of November, to be hereafter determined, notice of which will be given, there will be held in the hearing room of the Railroad Commission of Texas in the City of Austin, a hearing to determine whether or not this order shall be terminated at the expiration of the ninety day period, or whether it shall be modified and continued, or continued in all of its then terms. This paragraph in this order shall be deemed due notice of such hearing to all parties concerned.

"(6) No provision of this order shall be construed as relieving any person from a strict compliance with all existing laws and regulations of this Commission governing the production, distribution, storage and purchase of oil.

(Signed) "Pat M. Neff, Chairman. (Signed) C. V. Terrell. (Signed) Lon A. Smith, Commissioners.

"Attest: C. F. Petet, Secretary."

"I, C. F. Petet, Secretary of the Railroad Commission of Texas, do hereby certify that the attached is a true copy of an order of the Commission made on August 14, 1930, In re: conservation and prevention of waste of crude petroleum and natural gas in the various fields in the State of Texas, and the prevention of discrimination by common purchasers in the purchase of oil therefrom.

"Witness my hand and the seal of the Railroad Commission of Texas, on this the 23rd day of September A. D. 1930.

"C. F. Petet, Secretary Railroad Commission of Texas. (Seal.)"

EXHIBIT "C"

"Railroad Commission of Texas, Oil and Gas Division

"Oil and Gas Docket No. 112

"In re Conservation and Prevention of Waste of Crude Petroleum and Natural Gas in the Various Fields in the State of Texas and the Prevention of Discrimination by Common Purchasers in the Purchase of Oil Therefrom.

"Austin, Texas, August 26, 1930.

"Pursuant to the order entered herein on August 14, 1930, came on for hearing the objections to such order as proposed to be made effective August 27, 1930, and the other matters specified in said order. After hearing evidence, the Commission is of the opinion that said order should be modified in the particulars hereinafter indicated, and that the allowable production of this State during the proration period should be allocated within the several districts as set forth.

[fol. 293] "It is, therefore, ordered by the Railroad Commission of Texas:

"1. That the order of August 14, 1930, as herein modified and enlarged, be effective from and after August 27, 1930, at seven o'clock A. M.

"2. For the period of ninety days from and after such effective date the total daily production of oil in the State

of Texas shall not exceed the aggregate of the amounts allocated to the various districts of the State in said order as herein modified.

"3. The amount of 80,000 barrels allocated to the Panhandle district shall be distributed to producers in accordance with a plan to be adopted after hearing August 27, 1930.

"4. The amount of 69,000 barrels allocated to the North Central Texas district shall be distributed to the producing properties in said district according to plan submitted by the committee representing that district, which is hereby adopted and will be covered in detail by special order to be hereafter entered.

"5. The amount of 52,000 barrels allocated to the West Central Texas district shall be distributed to the producers therein on the basis of the report of the committee representing operators in said district, which report is hereby adopted and will be covered by special order to be entered in this cause.

"6. The amount of 41,850 barrels allocated to the East Texas district shall be distributed to the producers in the Van field according to an order already entered controlling the same, and the remainder of the amount allocated to said district to be alloted to producing properties ratably upon the basis of their present production as of August 16, 1930.

"7. By agreement of parties interested, the final determination of the amount to be allocated to the West Texas district is further deferred to give Reagan County operators an opportunity to work out, with the aid of the technical advisor selected for that purpose, a plan to control and curtail production of deep wells in the Big Lake field, and until that problem is worked out the daily production in said district shall not exceed 276,350 barrels, distributed in accordance with proration orders now in effect, applicable to particular fields, and allowing to Crane and Upton Counties 29,000 barrels per day, to be allocated to particular properties in accordance with a plan hereafter to be adopted and to other counties in said district on the basis of their present production as of August 16, 1930.

"8. The daily production of the Southwest Texas district shall not exceed 97,150 barrels, to be allocated as follows:

Darst Creek field and Salt Flat field in accordance with existing proration orders;

Chapman field in Williamson County, 9,000 barrels apportioned ratably among the various producers in such field; and to the Laredo field, 13,500 barrels, apportioned ratably among the producers;

[fol. 294] And to the other fields in said district not to exceed their production, respectively, as of August 16, 1930.

"9. In consideration of assurance given the Commission by the local committees of operators in the Gulf Coast district that such operators will curtail production as rapidly and effectively as practicable by drilling only necessary wells, and other methods suggested in the reports of said committees on file, the limitation of daily production in said district of 150,500 barrels, imposed in the tentative order of August 14, 1930, is postponed for a period of thirty days from August 27, 1930, and in the meantime no producing property in said district shall exceed its present daily production as of August 16, 1930, provided that all new wells completed after the effective date of this order and all offsets thereto shall not be allowed to produce in excess of 500 barrels of oil daily, and that all flowing wells shall be properly equipped with tubing and minimum chokes to effect the maximum possible reduction in production consistent with safe operation and to control and restrict the production of all new wells and their offsets to the maximum of 500 barrels of oil as herein specified.

"Pat M. Neff, Chairman. C. V. Terrell, Commissioner. Lon A. Smith, Commissioner.

Attest: C. R. McNamee, Acting Secretary. (Seal.)"

"I, C. F. Petet, Secretary of the Railroad Commission of Texas, hereby certify that the foregoing is a true copy of an order of the Commission made on August 26, 1930, in re: conservation and prevention of waste of crude petroleum and natural gas in the various fields in the State of Texas, and the prevention of discrimination by common purchasers in the purchase of oil therefrom.

"Witness my hand and the seal of the Railroad Commission of Texas on this the 23rd day of September, A. D. 1930.

C. F. Petet, Secretary Railroad Commission of Texas. (Seal.)"

EXHIBIT "D"

"Railroad Commission of Texas, Oil and Gas Division

"Oil and Gas Docket No. 112

"In re Conservation and Prevention of Waste of Crude Petroleum and Natural Gas in the Various Fields in the State of Texas and the Prevention of Discrimination by Common Purchasers in the Purchase of Oil Therefrom

"Austin, Texas, August 26, 1930.

"Order Adopting Rule Covering Marginal Wells

"Pursuant to the provisions of the statutes relating thereto and due notice given therefor and to hearing by the [fol. 295] Railroad Commission of Texas at Austin on August 25th and 26th, 1930, the following permanent rule defining marginal wells and exempting such wells from curtailment in the purchase of oil within the State of Texas by any common purchaser electing to purchase oil in smaller quantities than the amount tendered it for purchase is hereby adopted, effective this date:

"Any producing property within this State having a daily per well production of six barrels or less, averaged over the preceding thirty consecutive days, producing from a depth of 2,000 feet or less, shall be deemed to be a property producing only from marginal wells.

"Any producing property within this State having a daily per well production of twelve barrels or less, averaged over the preceding thirty consecutive days, producing from a horizon deeper than 2,000 feet and less than 3,500 feet, shall be deemed to be a property producing only from marginal wells.

"Any producing property in this State having a daily per well production of twenty barrels or less, averaged over the preceding thirty consecutive days, producing from a horizon deeper than 3,500 feet, shall be deemed to be a property producing only from marginal wells.

"Whenever any common purchaser of oil, as defined by law, within this State shall elect to purchase oil in smaller quantities than the amount tendered it for purchase and it becomes necessary for such common purchaser to prorate the amount of its purchases among the tenderers of such oil, such common purchaser shall not prorate its purchases from properties producing only from marginal wells as herein defined, unless the total oil tendered it for purchase from properties producing from marginal wells and from all other properties treated and considered as though producing from marginal wells only exceeds the amount of oil which such common purchaser then elects to purchase, in which event all properties shall be considered to be marginal properties, and shall participate in the outlet in proportion to the number of producing oil wells thereon.

"Pat M. Neff, Chairman. C. V. Terrell, Commissioner. Lon A. Smith, Commissioner.

Attest: C. R. McNamee, Acting Secretary.

"The above and foregoing is a true and correct copy of an order of the Railroad Commission entered this the 26th day of August, 1930.

"C. R. McNamee, Acting Secretary."

"I, C. F. Petet, Secretary of the Railroad Commission of Texas, hereto certify that the foregoing is a true copy of an order of the Commission made on August 26, 1930, in re: conservation and prevention of waste of crude petroleum and natural gas in the various fields in the State of Texas, and the prevention of discrimination by common purchasers in the purchase of oil therefrom.

[fol. 296] "Witness my hand and the seal of the railroad Commission of Texas on this the 23rd day of September, A. D. 1930.

C. F. Petet, Secretary Railroad Commission of Texas. (Seal.)"

[fol. 297] IN UNITED STATES DISTRICT COURT

STIPULATION RE STATEMENT OF EVIDENCE

The solicitors for the plaintiff and defendants hereby agree that the foregoing is a correct statement of the evidence pertinent to the issues on appeal to the United States Supreme Court which was received at the hearing in the above entitled cause.

Dated this 14th day of May, 1931.

Horace G. McKeever, Harry O. Glasser, George S. Ramsey, Edgar S. de Meules, Solicitors for Plaintiff. J. Berry King, Attorney General of Oklahoma. E. S. Ratliff, Attorney for Corporation Commission of Oklahoma. W. P. Z. German, Solicitor for Defendants.

[fol. 298] IN UNITED STATES DISTRICT COURT

[Title omitted]

CERTIFICATE FOR NARRATIVE STATEMENT UNDER EQUITY RULE 75 (B)—Filed May 18, 1931

The foregoing narrative statement of the evidence is hereby allowed and approved, and where therein the testimony of any witness is reproduced in the exact words of the witness, it was so desired by the parties, and the court hereby directs that it be so done; and the same is hereby ordered filed as a statement of the evidence to be included in the record on appeal in the above styled cause, as provided in paragraph (b) of Equity Rule 75.

Dated this 18 day of May, 1931.

John H. Cotteral, Circuit Judge. R. L. Williams, F. E. Kennamer, District Judges.

[File endorsement omitted.]

[fol. 299] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed April 22, 1931

The above named plaintiff, conceiving himself aggrieved by the decree and order made in the above entitled cause on the 9th day of February, 1931, denying its application for a temporary injunction, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors, which is filed herewith, and prays that the appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said decree and order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this the 22nd day of April, 1931.

Horace G. McKeever, Harry O. Glasser, George S. Ramsey, Edgar A. de Meules, Attorneys for Plaintiff-appellee.

[File endorsement omitted.]

[fol. 300] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed April 22, 1931.

The plaintiff prays an appeal from the order or decree entered in the above entitled cause on the 9th day of February, 1931, and assigns for errors:

(1) That the court erred in finding that the essential and controlling question of fact was whether the Corporation Commission had substantial evidence before it showing that actual waste of crude oil would result from enjoining the enforcement of the defendants' orders set out in the pleadings and shown by the exhibits thereto or in evidence.

(2) That the court erred in finding that any competent evidence was before the Corporation Commission and con-

sidered by it showing that actual waste of oil would result from issuing the writ of injunction prayed for.

(3) That the court erred in ruling that the finding of the Corporation Commission that actual waste of crude oil would result but for their orders was conclusive upon it upon that subject.

(4) That the court erred in holding that the act of the [fol. 301] Legislature of the State of Oklahoma, approved February 11th, 1915, entitled "An Act defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground and conferring authority on the Corporation Commission, prescribing the penalty for the violation of the act, and declaring an emergency" embodied in Sections 7954 to 7963, inclusive, Oklahoma Compiled Laws of 1921, is not in contravention of the Fourteenth Amendment to the Constitution of the United States in that it deprives the plaintiff of its property without due process of law.

(5) That the court erred in holding that the Act of the Legislature of the State of Oklahoma, approved February 11th, 1915, entitled "An Act defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground and conferring authority on the Corporation Commission, prescribing the penalty for the violation of the act, and declaring an emergency," is not in contravention of the Fourteenth Amendment to the Constitution of the United States in that it is too uncertain and indefinite to constitute due process of law in that it does not with sufficient certainty prescribe a standard of conduct.

(6) That the court erred in not holding that the aforesaid Act of the Oklahoma Legislature approved February 11th, 1915, embodied in Sections 7954 to 7963 inc. Oklahoma Compiled Laws 1921, was entire and inseparable and as such is a price-fixing statute delegating authority to the Corporation Commission of the State of Oklahoma to fix prices of crude oil after making the investigation required by Section 2 of the Act, and that as thus construed it is in violation of the Fourteenth Amendment to the Constitution of

the United States in that it deprives (a) the plaintiff of its liberty of contract, (b) equal protection of the law, and (c) its property without due process of law.

[fol. 302] (7) That, if said Act approved February 11th, 1915 (Section 7954 to 7963, inc. Oklahoma C. L. 1921), is severable and the second section thereof is unconstitutional, then the court erred in not ruling and holding that the Act without Section 2 thereof is void for uncertainty in that it violates the Fourteenth Amendment to the Constitution of the United States in that it is too indefinite and uncertain to constitute due process of law or notify the plaintiff and those similarly situated what standard of conduct is required, and too indefinite and uncertain to authorize and empower the Corporation Commission of the State of Oklahoma to make the orders complained of in this case.

(8) That the court erred in not ruling and finding that all the Corporation Commission's orders complained of are void for the reason that no gauge of the wells in the Oklahoma City field, described in the pleadings, had been made by the Corporation Commission or any lawful agency of the Corporation Commission or lawful agency of the State of Oklahoma.

(9) That the court erred in refusing to find and rule that the defendants' finding of the potential production of crude oil in the Oklahoma City field, described in the pleadings, was not based upon any gauge of the wells made by a duly qualified employee, or appointee, or agent of the Corporation Commission, or the State of Oklahoma, it appearing from the undisputed evidence that the umpires mentioned in the defendants' orders complained of received no compensation from the state or any political subdivision of the state, but were paid their compensation by private individuals and corporations doing business in competition with the plaintiff.

(10) That the court erred in holding that the order of the Corporation Commission of the State of Oklahoma made and entered on June 30th, 1930, in cause No. 10,146, [fol. 303] being order number 5189, and the order of the Corporation Commission of the State of Oklahoma made and entered on August 30th, 1930, in cause No. 10,146, said

order being number 5292, and the order of the Corporation Commission of the State of Oklahoma made and entered on September 30th, 1930, in said cause No. 10,146, being order number 5337, and the order of the Corporation Commission of the State of Oklahoma made and entered on October 28th, 1930, in said cause No. 10,146, being order number 5369, and the order of the Corporation Commission of the State of Oklahoma made and entered on the 30th day of December, 1930, being order number 5413, were not each separately and all together void as being in violation of Section 8 of Article I of the Constitution of the United States, in that each and all regulate commerce among the several states, foreign nations and Indian Tribes.

(11) That the court erred in holding that the order of the Corporation Commission of the State of Oklahoma made and entered on June 30th, 1930, in cause No. 10,146, being order number 5189, and the order of the Corporation Commission of the State of Oklahoma made and entered on August 30th, 1930, in cause No. 10,146, being order number 5292, and the order of the Corporation Commission of the State of Oklahoma made and entered on September 30th, 1930, in said cause No. 10,146, being order number 5337, and the order of the Corporation Commission of the State of Oklahoma made and entered on October 28th, 1930, in cause No. 10,146, being order number 5369, and the order of the Corporation Commission of the State of Oklahoma made and entered on the 30th day of December, 1930, being number 5413, were not each separately and/or all together void in that they did not deprive the plaintiff of its property without due process of law.

(12) That the court erred in holding that the order of [fol. 304] the Corporation Commission of the State of Oklahoma made and entered on June 30th, 1930, in cause No. 10,146, being order number 5189, and the order of the Corporation Commission of the State of Oklahoma made and entered on August 30th, 1930, in cause No. 10,146, being order number 5292, and the order of the Corporation Commission of the State of Oklahoma made and entered on September 30th, 1930, in said cause Number 10,146, being order number 5337, and the order of the Corporation Commission of the State of Oklahoma made and entered on

October 28th, 1930, in cause No. 10,146, being order number 5369, and the order of the Corporation Commission of the State of Oklahoma made and entered on the 30th day of December, 1930, being number 5413, were not void in that they did not deny to the plaintiff the equal protection of the law and were, therefore, not in violation of the Fourteenth Amendment to the Constitution of the United States.

(13) That the court erred in not holding that the order of the Corporation Commission of the State of Oklahoma made on June 30th, 1930, in said cause No. 10,146, being order No. 5189, and the order made by said Corporation Commission on October 28th, 1930, in said cause No. 10,146, being order No. 5369 were void in that they denied to the plaintiff due process of law as required by the Fourteenth Amendment to the Constitution of the United States.

(14) That the court erred in not holding that the order of the Corporation Commission of the State of Oklahoma made on June 30th, 1930, in said cause No. 10,146, being order No. 5189, and the order made by said Corporation Commission on October 28th, 1930, in said cause No. 10,146, being order No. 5369 were void in that they denied to the plaintiff the equal protection of the law as required by the Fourteenth Amendment to the Constitution of the United States.

[fol. 305] (15) That the court erred in holding that the order of the Corporation Commission of the State of Oklahoma made and entered on June 30th, 1930, in cause No. 10,146, being order number 5189, and the order of the Corporation Commission of the State of Oklahoma made and entered on August 30th, 1930, in cause No. 10,146, being order number 5292, and the order of the Corporation Commission of the State of Oklahoma made and entered on September 30th, 1930, in said cause number 10,146, being order number 5337, and the order of the Corporation Commission of the State of Oklahoma made and entered on October 28th, 1930, in cause No. 10,146, being order No. 5369, and the order of the Corporation Commission of the State of Oklahoma made and entered on the 30th day of December, 1930, being number 5413, did not constitute a price fixing scheme and were, therefore, not void in that they deprived the plaintiff of its liberty of contract guaranteed by

the Fourteenth Amendment to the Constitution of the United States.

(16) That the court erred in holding that the finding of the Corporation Commission of the State of Oklahoma as to the existence of actual waste was binding upon it and was not subject to its review.

(17) That the court erred in refusing to rule and find that the plaintiff, if unrestrained by the defendants' orders, could and would produce crude oil, refine it and market it without any actual or material waste and as a consequence thereof was entitled to have the enforcement of defendants' said orders against it restrained and vacated insofar as plaintiff is concerned.

Wherefore plaintiff prays that the decree or order of the court of February 9th, 1931, denying to the plaintiff a tem-
[fol. 306] porary injunction be reversed.

Horace G. McKeever, Harry O. Glasser, George S. Ramsey, Edgar A. de Meules, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 307] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed April 22, 1931

Now, on this 22nd day of April, 1931, came the plaintiff Champlin Refining Company, a corporation, by its attorneys and files herein and presents to the Court its petition praying for the allowance of an appeal to the Supreme Court of the United States, and it appearing that the plaintiff has filed therewith its Assignment of errors, and the Court being fully advised in the premises does hereby allow an appeal to the Supreme Court of the United States as prayed for upon the filing of a bond in the sum $1,000.00 with good and sufficient surety to be approved by the court.

John H. Cotteral, Circuit Judge. R. L. Williams, F. E. Kennamer, District Judges.

[File endorsement omitted.]

[fols. 308 & 309] Bond on Appeal for $1,000, approved and filed April 22, 1931, omitted in printing.

[fol. 310] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR RECORD TO BE SENT TO THE SUPREME COURT OF THE UNITED STATES—Filed April 22, 1931

To the Clerk of the United States District Court for the Western District of the State of Oklahoma:

In making up the record and transcript for the Supreme Court of the United States in the above entitled cause, you will include in the record and transcript only such parts as are hereby mentioned omitting all other parts of the record, to-wit:

(1) Certificate of Honorable Edgar S. Vaught Judge of the District Court for the Western District of Oklahoma, as to his disqualification in the above entitled cause.

(2) Order of Circuit Court of Appeals for the Tenth Circuit assigning Honorable Franklin E. Kennamer as District Judge to the Western District of Oklahoma.

(3) Order of Circuit Court of Appeals for the Tenth Circuit assigning Honorable R. L. Williams as District Judge to the Western District of Oklahoma.

(4) Plaintiff's second amended and supplemental bill of complaint filed by leave of court on the 2nd day of December, 1930, together with all exhibits thereto attached;

(5) Amendment to second amended and supplemental bill filed January 2nd, 1931;

(6) Answer of defendants to second amended and supplemental bill of complaint;

[fol. 311] (7) Stipulation between the parties filed January 2, 1931.

(8) The decree or order entered on February 9th, 1931, denying plaintiff's application for a temporary injunction.

(9) Findings of Fact filed in the cause on February 9th, 1931.

(10) Conclusions of Law filed in the cause.

(11) Majority opinion of the Court.

(12) Dissenting opinion of Judge Kennamer.

(13) Plaintiff's petition for appeal filed on April 22nd, 1931.

(14) Order allowing appeal entered on April 22nd, 1931.

(15) Plaintiff's assignment of errors on appeal filed on April 22nd, 1931.

(16) Plaintiff's Appeal Bond filed April 22nd, 1931.

(17) Citation issued on April 22nd, 1931, on plaintiff's petition, together with acceptance of service thereof endorsed thereon.

(18) Application for an order permitting cause to be continued and maintained against Paul Walker as successor in office to Fred C. Capshaw.

(19) Consent of Paul Walker to the entering of the order prayed for.

(20) Order permitting cause to be continued and maintained against Paul Walker as successor in office to Fred C. Capshaw.

(21) Condensed statement in narrative form of the evidence introduced at the hearing for a temporary injunction.

(22) This præcipe.

Horace G. McKeever, Harry O. Glasser, George S. Ramsey, Edgar A. de Meules, Counsel for Plaintiff.

[fol. 312] I, as attorney of record for the defendant-appellees in the above entitled cause, do hereby acknowledge service of a copy of the foregoing præcipe on me on this the 22nd day of April, 1931.

E. S. Ratliff, J. Berry King, Atty. Genl., Attorneys for Defendant-appellees.

[File endorsement omitted.]

[fol. 313] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 314] IN SUPREME COURT OF THE UNITED STATES

APPELLANT'S DEFINITE STATEMENT OF THE POINTS UPON WHICH IT RELIES AND STIPULATION TO PRINT ENTIRE RECORD—Filed May 29, 1931

In accordance with Section 9 of Rule 13 of this Court appellant submits the following:

Statement of Parts of Record Necessary for Consideration

As counsel for appellant and appellees cooperated to a large extent in eliminating surplus matter from the transcript certified to this court it will be necessary to print the entire record, omitting therefrom repetition of the caption.

(NOTE.—As to taxation of cost this is not to operate as a waiver of appellant's objection in the court below to the insertion in the evidence of the affidavits of R. D. Parker, Ray Lyman Wilbur, R. D. Rush, and George Otis Smith. See R. 265.)

[fol. 315] Statement of Points Relied On

(1) That Section 2 of the Act of the Oklahoma Legislature approved February 11th, 1915, (1915 Session Laws, 28, same as Sections 7954 to 7963, inclusive, Oklahoma C. L. 1921) hereinafter referred to as the Curtailment Act, undertakes to authorize the Oklahoma Corporation Commission to fix the price of crude petroleum oil produced in Oklahoma and is therefore void in that it is in violation of the Fourteenth Amendment to the National Constitution.

(2) That Section 2 of said Curtailment Act is not a separable part thereof and therefore the whole act must fall as in violation of the Fourteenth Amendment to the National Constitution.

(3) That if Section 2 of the Curtailment Act is so far separable that the remaining sections, or any part thereof, may be considered as independent of Section 2, then the Act, without Section 2, is too vague and uncertain to meet the requirements of due process of law guaranteed by the Fourteenth Amendment to the National Constitution.

(4) That the Curtailment Act is beyond the state's police power in that the production of crude oil is not a public or quasi public business.

(5) That the ownership of lands in fee and/or oil leases thereon and the extraction of crude petroleum oil therefrom through wells and the manufacture of the refined products from crude oil is not a devotion of appellant's property or business to a public use—that is, it is not a public or quasi public business authorizing the State Legislature to enact

the said Curtailment statute under the police powers of the State.

(6) That the Curtailment Act is in violation of the Fourteenth Amendment to the National Constitution in that [fol. 316] it denies the appellant liberty of contract as defined by this court in Allgeyer v. State of Louisiana, 165 U. S. 578, and other decisions.

(7) That the Curtailment Act, as construed and enforced by the appellee, as members of the Oklahoma Corporation Commission, operates as a taking of appellant's property without due process of law guaranteed by the Fourteenth Amendment to the National Constitution.

(8) That appellees' rules and orders shown by the exhibits to appellant's, Second Amended and Supplemental Bill, including the order of December 30th, 1930, No. 5413, being legislative in their nature and made by an instrumentality of the state, are state laws within the meaning of the National Constitution and although an appeal therefrom is allowed by the Curtailment Act to the Oklahoma Supreme Court, nevertheless as that court has no legislative power and can not be vested with such powers by the Legislature the appellant had the right to invoke the jurisdiction of the United States District Court to restrain the enforcement of said orders and rules of appellees without first appealing therefrom to the Supreme Court of Oklahoma.

(9) That each of the appellees' orders shown by exhibits to appellant's Second Amended and Supplemental Bill, including the order of December 30th, 1930, No. 5413, is void in that each as applied to appellant violates the commerce clause of Section 8 of Article 1 of the National Constitution.

(10) That appellees' orders complained of by appellant in its Second Amended and Supplemental Bill and amendment thereto, including the order of December 30th, 1930, No. 5413, were made without any evidence before the Commission of actual or physical waste of crude petroleum in the Oklahoma oil fields in which appellant was and is a producer of crude oil and the enforcement of either of said [fol. 317] orders against appellant constitutes a taking of appellant's property without due process of law and operates as a denial of appellant's property rights guaranteed

by the Fourteenth Amendment to the National Constitution.

(11) That appellees' said orders, and each of them, are void because they and each of them were made without the Commission having first taken a gauge of each oil well as required by Section 5 of the Curtailment Act, thus rendering the enforcement of the orders, and particularly order No. 5413 of December 30th, 1930, under the high penalties prescribed by the Act and other Oklahoma statutes, such an excessive application of the appellees' powers as to deprive appellant of its property and liberty without that due process of law required by the Fourteenth Amendment to the National Constitution.

(12) That the pretended gauges of the oil wells upon which the potential production of crude oil was determined by the Commission and the orders complained of limiting the production of crude oil by appellant and other producers were based, are void and illegal gauges in that said gauges of the wells accepted and acted upon by the Commission were made by private persons, firms and corporations, and their employees, contrary to the Curtailment statute, and no gauge having been made or superintended by a state officer or impartial, uninterested official, each of appellees' orders is void in that the enforcement thereof, particularly in view of the high penalties prescribed by the Curtailment Act and other statutes, deprives appellant of its property without due process of law.

(13) That appellant as the owner of oil leases on lands in Oklahoma described in its Second Amended and Supplemental Bill is vested with the right to enter thereon, drill wells for oil and take through said wells all the oil it can [fol. 318] find so long as it can find a market therefor satisfactory to itself or utilize in its own refinery, and that this right is safeguarded by the Fourteenth Amendment to the National Constitution.

(14) That appellant is the owner of valuable oil and gas leases in several of the Oklahoma oil fields from which it produces and had produced a long time before this suit was commenced and the orders of the Commission made, large quantities of crude oil which it manufactured into gasoline

and other refined products at its refinery located at Enid, Oklahoma; that said Curtailment Act as enforced by the Commission by and through its orders complained of operates to deny appellant its liberty of contract and equal protection of the laws guaranteed by the Fourteenth Amendment to the National Constitution.

(15) That the Curtailment Act is an unconstitutional delegation of Legislative powers to the Corporation Commission, thus rendering the Commission's orders thereunder void.

Respectfully submitted.

Horace G. McKeever, Horace G. McKeever, Harry O. Glasser, Harry O. Glasser, Edgar A. de Meules, Edgar A. de Meules, Geo. S. Ramsey, George S. Ramsey, Attorneys for Appellant.

[fols. 319 & 320] Receipt of a copy of the foregoing Appellant's Definite Statement, etc., is hereby acknowledged on this 23rd day of May, 1931.

J. Berry King, Attorney General of Oklahoma; E. S. Ratliff, W. P. Z. German, Attorneys for Appellees.

[fols. 321 & 322] Stipulation as to Printing of Record

It is hereby stipulated by and between the parties hereto that the entire record filed in the above entitled cause be printed.

Dated this 23rd day of May, 1931.

Horace G. McKeever, Harry O. Glasser, George S. Ramsey, Edgar A. de Meules, Attorneys for Appellant. J. Berry King, E. S. Ratliff, W. P. Z. German, Attorneys for Appellees.

[File endorsement omitted.]

Endorsed on cover: File No. 35,936. W. Oklahoma D. C. U. S. Term No. 122. Champlin Refining Company, appellant, vs. Corporation Commission of the State of Oklahoma et al., etc. Filed May 29, 1931. File No. 35,936.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF THE STATE OF OKLAHOMA

Equity. No. 1156

CHAMPLIN REFINING COMPANY, a Corporation, Plaintiff,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al., Defendants

ORDER EXTENDING TIME WITHIN WHICH TO FILE RECORD IN THE SUPREME COURT OF THE UNITED STATES

For satisfactory reasons appearing to the Court, the time for filing the record in this cause in the Supreme Court of the United States, pursuant to the appeal sued out, is extended until the 12th day of June, 1931.

Dated this 18 day of May, 1931.

John H. Cotteral, Circuit Judge. R. L. Williams, F. E. Kennamer, District Judges.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF THE STATE OF OKLAHOMA

Equity. No. 1156

CHAMPLIN REFINING COMPANY, a Corporation, Plaintiff,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al., Defendants

ORDER EXTENDING TIME WITHIN WHICH TO FILE RECORD IN THE SUPREME COURT OF THE UNITED STATES

For satisfactory reasons appearing to the Court, the time for filing the record in this cause in the Supreme Court of the United States, pursuant to the appeal sued out, is extended until the 30th day of May, 1931.

Dated this 2 day of May, 1931.

John H. Cotteral, Circuit Judge. R. L. Williams, F. E. Kennamer, District Judges.